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Co-Lead Counsel for Plaintiffs

16 UNITED STATES DISTRICT COURT  
17  
18 NORTHERN DISTRICT OF CALIFORNIA  
19 SAN JOSE DIVISION

20 In re CONSECO INSURANCE CO.  
ANNUITY MARKETING & SALES  
PRACTICES LITIG.

) No. C-05-04726-RMW  
) And Related Cases  
)

) CLASS ACTION  
)

22 This Document Relates To:

) SECOND AMENDED CONSOLIDATED  
) CLASS ACTION COMPLAINT  
)

23 ALL ACTIONS.  
24

) DEMAND FOR JURY TRIAL  
)  
25  
26  
27  
28

1 Plaintiff Robert H. Hansen (“Plaintiff” or “Mr. Hansen”), by and through his attorneys, files  
 2 this Second Amended Consolidated Class Action Complaint against Conseco Insurance Company,  
 3 (formerly known as Conseco Annuity Assurance Company) (“CIC”), Conseco Services, L.L.C.  
 4 (“Conseco Services”), Conseco Marketing, L.L.C. (“Conseco Marketing”), 40/86 Advisors, Inc.  
 5 (“40/86”), and Conseco, Inc. (“Conseco”) (collectively referred to as “Defendants”) on behalf of  
 6 himself and all other similarly situated senior citizens who purchased or owned deferred annuity  
 7 products issued by CIC when they were 65 or older, and were damaged thereby. Upon information  
 8 and belief, as well as the investigation of counsel, Plaintiff alleges as follows:

### 9 JURISDICTION AND VENUE

10 1. This Court has original jurisdiction over the subject matter of this action pursuant to  
 11 28 U.S.C. §§1331-32 and 18 U.S.C. §1964. This Court has personal jurisdiction over Defendants  
 12 pursuant to 18 U.S.C. §1965(b) and (d). The Court has supplemental jurisdiction over the state law  
 13 claims pursuant to 28 U.S.C. §1367. The amount in controversy exceeds \$75,000 for the named  
 14 Plaintiff, exclusive of costs and interest, and includes the loss of annuity benefits and accumulated  
 15 cash value, the payment of surrender charges, and Plaintiff’s pro rata share of punitive damages,  
 16 injunctive and equitable relief, and attorneys’ fees, in which Plaintiff and each Class Member have  
 17 an individual interest. Furthermore, the aggregate amount in controversy for this class action  
 18 exceeds \$5,000,000, and less than one-third of all Class Members reside in California. *See* Class  
 19 Action Fairness Act (“CAFA”), 28 U.S.C. §1332, Pub. L. No. 109-2, 119 Stat. 4 (2005).

20 2. Venue is proper in this District pursuant to 28 U.S.C. §1391(a) and (b) because CIC  
 21 maintains offices, has agents and is licensed to and does transact business in this Judicial District.  
 22 Venue is also proper under 18 U.S.C. §1965(a) because CIC transacts substantial business in this  
 23 District.<sup>1</sup>

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24  
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 26  
 27 <sup>1</sup> According to A.M. Best Company’s 2005 Report, 21.2% of CIC’s direct premiums for all  
 28 products are earned in California.

**PARTIES**

3. Plaintiff Robert H. Hansen is, and at all times mentioned herein was, a resident and citizen of the State of California, County of Santa Clara. On August 11, 2000, Mr. Hansen, aged 68 years old at the time, purchased a Consec Choice equity-indexed annuity issued by CIC. The Consec Choice deferred annuity sold to Mr. Hansen contained a maturity date of August 11, 2027, which extended beyond Mr. Hansen's actuarial life expectancy. While the Consec Choice contract gave Mr. Hansen the option to reset the maturity date, the contract did not permit resetting the maturing date to a date prior to the expiration of the surrender-charge period. The Consec Choice contained a fifteen-year surrender charge period – making August 11, 2017, the earliest maturity date possible under the Consec Choice contract, which was still beyond Mr. Hansen's actuarial life expectancy. Additionally, the Consec Choice imposed a surrender charge of 20% for the first five contract years.

4. Defendant Consec, Inc. ("Consec"), a Delaware corporation, is a financial services company comprised of a group of insurance companies operating throughout the United States that develop, market, and administer annuity, supplemental health insurance, individual life insurance and other insurance products. Consec became the successor to Consec, Inc., an Indiana corporation ("Old Consec"), in connection with Old Consec's bankruptcy reorganization. Consec maintains its executive offices at 11825 N. Pennsylvania Street, Carmel, Indiana, 46032. At all times relevant hereto, Consec, along with its insurance subsidiaries, has focused on serving the senior market, which it views as an attractive, high growth market.

5. Defendant Consec Insurance Company ("CIC"), an Illinois corporation, is authorized to, and in fact does, transact substantial business in the State of California and within this judicial district. CIC is the wholly-owned subsidiary of Washington National Insurance Company, which is ultimately a wholly-owned subsidiary of Defendant Consec. CIC maintains executive offices at 222 Merchandise Mart Plaza, Chicago, Illinois, 60654. Prior to September 2004, CIC was known as Consec Annuity Assurance Company. CIC markets and sells a number of insurance products, including deferred annuities, immediate annuities, ordinary and group life insurance, and accident and health insurance.

6. Defendant Consecos Services, L.L.C. (“Consecos Services”), an Indiana corporation, is a wholly-owned subsidiary of Consecos Management Services Company, a Texas corporation, which, in turn, is a wholly-owned subsidiary of Defendant Consecos. Consecos Services maintains its executive offices at 11825 N. Pennsylvania Street, Carmel, Indiana 46032. Consecos Services provides accounting, tax, marketing, actuarial services, asset management, legal, underwriting, policyholder services, regulatory compliance, data processing and other functional support services for Consecos’s various subsidiaries and business segments, including the deferred annuity operations

7. Defendant Consecos Marketing, L.L.C. (“Consecos Marketing”), an Indiana corporation, is a subsidiary of Consecos Services. Consecos Marketing maintains its executive offices at 11825 N. Pennsylvania Street, Carmel, Indiana 46032. Consecos Marketing provides administrative and marketing services to CIC and other Consecos insurance subsidiaries arising out of their agent relationships.

8. Defendant 40/86 Advisors, Inc. (“40/86”), a Delaware corporation, is a wholly-owned subsidiary of Consecos. 40/86 maintains its executive offices at 11825 N. Pennsylvania Street, Carmel, Indiana 46032. 40/86 provides investment and advisory services to CIC and other Consecos insurance subsidiaries.

## FACTUAL ALLEGATIONS

### **I. Defendants’ Fraudulent Scheme Targeting Senior Purchasers**

9. In late 1996, Stephen Hilbert, Consecos’s then-Chairman of the Board, outlined Defendants’ blueprint for capitalizing on the profitable and vulnerable senior market. Hilbert announced that through a series of acquisitions, Defendants had positioned themselves to become a dominant player in sale of annuities and other insurance products to the senior market. Hilbert observed that sales of annuities to senior citizens represent “the best marketplace in the industry” and because the senior market is “where the money is.” After several acquisitions in the mid-1990s, Defendants estimated that annuity sales would represent about 40% of all premiums collected.

10. In the following years, Defendants devised and orchestrated a fraudulent scheme to intentionally target vulnerable senior citizens for the sale of CIC deferred annuities. In furtherance of this scheme, Defendants represent to seniors that the CIC deferred annuities are safe and secure

investments that pay a competitive rate of return. In reality, CIC deferred annuities are illiquid, poorly performing products that are wholly inappropriate investments for senior citizens. To lure elderly purchasers with the false appearance of competitive rates, Defendants employ bait and switch sales tactics involving inflated “teaser” rates that Defendants plan to cut in future years and illusory bonuses that Defendants recoup through lower rates and surrender penalties. Defendants know that CIC cannot and will not maintain the rates used to market and sell deferred annuities to seniors because its ultimate parent, Consecos, systematically siphons enormous sums from CIC through dividends and exorbitant service fees. Defendants fail to disclose numerous adverse material facts about their deferred annuities, thereby misleading senior purchasers on virtually every critical product characteristic, including: (1) product features, cost and performance; (2) investment risk; and (3) illiquidity of investment.

11. To implement the fraudulent scheme, Defendants associate with corporate affiliates and with independent sales agents who unabashedly target vulnerable seniors for the sale of deferred annuities. Defendants’ scheme is especially pernicious because unsuspecting seniors, upon purchasing CIC deferred annuities are effectively locked in – often beyond their life expectancies – due to significant surrender penalties as high as 22%.

**A. The Consecos Group of Companies**

12. Defendants are part of a family of insurance, financial, and related companies – all of which are direct or indirect subsidiaries of Consecos. In addition to Defendants, Consecos directs and controls several other insurance and financial services companies, including Consecos Life Insurance Company, Consecos Health Insurance Company, Consecos Senior Health Insurance Company, and Washington National Insurance Company. Consecos refers to its operating subsidiaries, including CIC, as the “Consecos Group.” Consecos’s insurance subsidiaries sell a variety of products other than deferred annuities.<sup>2</sup>

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<sup>2</sup> For example, Consecos Life Insurance maintains a life insurance product portfolio consisting of universal life insurance, equity-indexed universal life insurance, term life, and whole life insurance. Consecos Health Insurance Company and Consecos Senior Health Insurance Company sell healthcare products, such as cancer insurance, Medicare supplements, home health plans, and long

1           13. As a holding company, Consecos conducts all of its operations through its wholly  
 2 owned subsidiaries. Using its power and control as the ultimate parent corporation, Consecos siphons  
 3 enormous sums of money from its subsidiaries through dividends, service fees and related party  
 4 transactions. Consecos explained its total dependence upon its subsidiaries for infusions of cash and,  
 5 likewise, the dependence of the various subsidiaries on Consecos's ability to direct and control  
 6 monetary disbursements should a company need a capital contribution.

7           [Consecos] depend[s] on [its] operating subsidiaries for cash to take principal and  
 8 interest payments on debt and to pay fees for services provided pursuant to service  
 9 agreements and income taxes. The cash [Consecos] receive[s] from insurance  
 10 subsidiaries consists of dividends and distributions, principal and interest payments  
 11 on surplus debentures, fees for services, tax-sharing payments, and from [its] non-  
 12 insurance subsidiaries, loans and advances. A deterioration in the financial  
 13 condition, earnings or cash flow of the significant subsidiaries of [Consecos] for any  
 reason could limit [its] ability to pay cash dividends or other disbursements to  
 [Consecos]. In addition, [Consecos] may need to contribute additional capital to  
 improve the risk-based capital ratios of certain insurance subsidiaries and this could  
 affect the ability of [its] top tier insurance subsidiary to pay dividends. Accordingly,  
 this would limit the ability of [Consecos] to meet debt service requirements and  
 satisfy other financial obligations.

14 Consecos, Inc., Annual Report (Form 10-K) at 29 (March 9, 2007).

15           14. Consecos conducts business planning and financial reporting and analysis for members  
 16 of the Consecos Group in accordance with product segments. Thus, in evaluating the projected and  
 17 actual revenues and operating results of CIC and other members of the Consecos Group, Consecos  
 18 management considers life insurance operations as separate and distinct from the annuity operations.

19           15. The subsidiaries comprising the Consecos Group are structured as separate  
 20 corporations, with ostensible separate existences, to comply with insurance regulations and to reap  
 21 certain tax and operational benefits. For example, as alleged in the following paragraphs, affiliates  
 22 within the Consecos Group provide services to CIC in exchange for the payment of service fees  
 23 which, in turn, are a revenue source for Consecos.

24           16. Consecos Services provides Defendants with accounting, tax, marketing, actuarial  
 25 services, asset management, legal, underwriting, policyholder services, regulatory compliance, data

26  
 27 term care insurance with Consecos Senior Health focusing solely on sales of these products to senior  
 28 citizens. Washington National sells deferred annuities primarily to educators and small employers.

1 processing and other functional support services. Conseco Marketing provides administrative and  
 2 marketing services to Defendants arising out of their agent relationships. Other members of the  
 3 Conseco Group maintain similar service agreements with Conseco Services and Conseco Marketing.

4 17. 40/86 Advisors, Inc. is a fixed income investment advisor and manages over \$26  
 5 billion in public corporate debt securities, taxable municipal bonds, emerging market securities, high  
 6 yield bonds, government bonds, mortgage related securities, privately placed debt securities,  
 7 commercial mortgages, bank loans, and CIC's investment portfolios. These investment activities are  
 8 critical to the financial health of CIC. Investment income earned on the spreads between interest  
 9 yields on investments and rates credited on insurance liabilities is the exclusive source of CIC's  
 10 profits. 40/86 serves as the chair of the asset/liability committee, which is responsible for, among  
 11 other things, crediting CIC's interest rates and monitoring its option hedging program for equity-  
 12 indexed annuities.

13 18. As alleged more fully below, the structure of the Conseco Group facilitates  
 14 Defendants' fraudulent scheme and enables Defendants to mask their illegal conduct behind the CIC  
 15 Enterprise. The fraudulent practices and criminal conduct of CIC and its affiliates and agents is  
 16 embedded in the business activities of CIC as a regulated insurance company offering a broad array  
 17 of insurance products. Similarly, while CIC holds itself out as a financially sound insurance  
 18 company that pays competitive rates on its insurance-related products, Conseco and other members  
 19 of the Conseco Group siphon hundreds of millions of dollars from CIC each year in the form of  
 20 dividends, excessive service fees and related-party transactions, thereby disabling CIC from paying  
 21 the attractive rates used to sell deferred annuities to unsuspecting senior citizens.

#### 22 **B. CIC's Deferred Annuity Products**

23 19. Annuities pool the risk of living beyond the annuitant's life expectancy. In contrast to  
 24 an immediate annuity, a deferred annuity – the type of annuity at issue in this complaint – is an asset  
 25 accumulation investment product. Purchasers of deferred annuities select from a limited number of  
 26 investment options. For example, Defendants may offer annuitants the option of investing premiums  
 27 in: (a) an account guaranteeing a fixed minimal rate of interest return; (b) an account whose rate of  
 28 interest return is dictated by a specific market "index," *e.g.*, Dow Jones Industrial Average or



1 Standard & Poor's Composite Stock Index; or (c) an account which combines and/or blends these  
2 two interest accrual methods.<sup>3</sup> Annuitants expect the value of the account to grow prior to using the  
3 accumulated account assets during retirement. Thus, for an investor to make an informed decision  
4 about deferred annuities and their attractiveness in relation to other investment products, it is  
5 critically important that the seller and its agents adequately disclose to and inform the investor about  
6 all of the features and risks of the annuity, including all material information necessary to understand  
7 the applicable product costs, charges, rates of return and penalties.

8 20. With a deferred annuity, the annuity owner cannot withdraw his or her investment or  
9 the earned interest until the holding period expires or the deferred annuity matures, which is usually  
10 between 10 and 20 years after the initial payment of the premium. Annuitants who within the first  
11 10-15 years withdraw their initial investment or accrued interest in excess of strict limits incur  
12 substantial surrender charges and/or penalties. These penalties and surrender charges, and adverse  
13 tax consequences, severely limit elderly annuity owners from meaningful access to their funds.

14 21. CIC offers a broad range of deferred annuity products. CIC's annuity portfolio  
15 consists of both single and flexible premium, fixed and equity-indexed deferred annuities, which  
16 carry maximum issue ages ranging from age 80 to 95 years old. All of CIC's deferred annuities  
17 contain a surrender charge period ranging from 5 to 15 years and starting surrender charges ranging  
18 from 8% to 22%. CIC's equity-indexed deferred annuities account for the majority of the product  
19 portfolio and depending on the product will offer anywhere from 2 to 10 crediting options. CIC also  
20 offers a number of fixed and multi-year guaranteed deferred annuities. Most of CIC's annuity  
21 products contain one or more riders, such as the nursing home or terminal illness rider.

22 22. The CIC deferred annuities are designed to target and exploit seniors. Consecro  
23 specifically addresses its products to the "Middle America Senior Market" and designs its deferred  
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25 <sup>3</sup> These latter two types of deferred annuities are sometimes referred to in the insurance  
26 industry as either "equity-indexed" or "multiple-choice" annuities. However, all of the deferred  
27 annuities relevant to this action provide for the repayment of the invested principal amount upon the  
28 annuity's maturity, together with any earned accumulated interest – which amount is determined by  
the particular interest accrual vehicle selected by the annuitant at the time of purchase, *e.g.*, fixed,  
equity-indexed, or multi-choice.



1 annuities based on the assumption that a majority of its deferred annuities will be sold to senior  
 2 citizens. Indeed, CIC intentionally designs its deferred annuities so that agents are authorized to sell  
 3 them, without restrictions, to seniors ranging from 80 to 95 years old – most often setting the  
 4 maximum issue age at 85 years old – a presumptive maximum issue age that is substantially higher  
 5 than the age limit set by other companies in the business of selling deferred annuities. To promote  
 6 sales to elderly consumers, CIC also adds worthless “features” to its deferred annuities – such as the  
 7 so-called Nursing Home Rider, Terminal Illness Rider, and Enhanced Death Benefit Rider – that are  
 8 attractive to seniors.

9 **C. Defendants’ Misleading Marketing Campaign**

10 23. Defendants promulgated their deceptive senior deferred annuity sales scheme through  
 11 uniformly misleading marketing materials that failed to disclose, *inter alia*, numerous material  
 12 adverse facts making Defendants’ deferred annuities are fundamentally inferior and far less valuable  
 13 to seniors than readily available alternative investment products. Defendants’ uniform marketing  
 14 materials are designed to appeal to vulnerable senior citizens and prey on their fears of risky or  
 15 insecure investments and living out their retirement years without financial security. Defendants’  
 16 marketing materials deceptively promote product features purported to be providing security of  
 17 principle, wealth accumulation through generous returns, liquidity and other attributes that are  
 18 especially appealing to seniors. To that end, marketing materials regarding CIC’s deferred annuity  
 19 products encourage Affiliated Agents to state that its annuities offer “tax deferred growth” with  
 20 “lifetime income” and “no risk of loss,” or “growth without risk,” and assure that the Annuity  
 21 product will “give your clients the opportunity to protect their money.” Conseco annuity product  
 22 point of sale brochures assure seniors that their “money can grow faster in a tax-deferred annuity  
 23 than other fixed-rated retirement vehicles,” that they have “EVERYTHING TO GAIN AND  
 24 NOTHING TO LOSE,” that in “an equity indexed annuity, you can choose to participate in the  
 25 upper movement of the . . . S&P 500 . . . without the downside risk,” and that “credited gains are  
 26 locked-in.” Seniors are also implored to “make a correct choice for retirement” and assured that  
 27 CIC’s annuities are “backed by the strength of Conseco Annuity Assurance.”  
 28

1           24.     Because the senior market is a lucrative source of sales for Defendants' deferred  
2 annuities, Defendants enlist Affiliated Agents who unabashedly target elderly purchasers. CIC's  
3 products are marketed and sold by independent sales agents affiliated with independent marketing  
4 organizations ("IMO's"). CIC has forged relationships with over 250 IMOs and has amassed a sales  
5 agent force of over 5000 agents. Defendants' individual sales agents and IMOs who target senior  
6 citizens with respect to sales of deferred annuities are collectively referred to herein as "Affiliated  
7 Agents."

8           25.     Many of CIC's top-producing IMOs focus their sales activities on senior citizens and  
9 teaching their agents techniques to target senior purchasers. For example, Broker's Choice of  
10 America was a longtime top-producer for CIC. Broker's Choice was the subject of regulatory  
11 proceedings by the Massachusetts Attorney General and the Colorado Division of Insurance arising  
12 from its deceptive sales of deferred annuities to senior citizens. In 2002, a Wall Street Journal  
13 exposé documented the abusive sales tactics of Broker's Choice directed at senior citizens, including  
14 advising sales agents to treat senior citizens "like they're blind 12-year olds," characterizing senior  
15 citizens as making purchases based upon "fear anger and greed," advising agents to dumb-down  
16 their explanations about annuities to senior citizens and say "it's like a CD – it's safe, it's  
17 guaranteed," and instructing sales agents to use educational seminars for senior citizens during  
18 which seminar sales agents should create problems for seniors and "you tease them with the  
19 solutions." Upon information and belief, Broker's Choice recently ceased selling CIC's deferred  
20 annuity products.

21           26.     Defendants contract with other IMOs known for targeting senior citizens for the sale  
22 of deferred annuity products. Some of these IMOs were trained by or affiliated with Broker's  
23 Choice. For example, Dressander & Associates, a top-producing IMO for CIC, recruits sales agents  
24 by promoting that they "Need a Partner . . . to be Successful in the Senior Market," and boasting  
25 about techniques taught by Dressander for selling to senior citizens. Another top-producer IMO,  
26 Roster Financial, LLC entices prospective agents by stating "[i]t is the money that your senior clients  
27 are keeping . . . that will allow you to supercharge your EIA sales." Yet another top producer for  
28 CIC, Personalized Brokerage Services, advises its agents that "Seniors have money. Seminars are

king. Run seminars for Seniors.” Pinnacle Financial Services, Creative Marketing Insurance Company, and The Annuity Store also specifically target the senior market and are or have been consistent top-producing agents for CIC. The Annuity Store recently co-developed a product with CIC and will receive an additional override from sales of that product. Defendants and their Affiliated Agents train other Affiliated Agents and individual sales agents to target senior citizens by publicizing financial and estate planning services at seminars and community service events for the elderly.

27. Defendants instruct Affiliated Agents to begin their sales presentations with financial planning advice even though most Affiliated Agents lack the required license and training to provide competent financial advice to seniors. Nevertheless, in these targeted solicitations and at estate planning seminars, Affiliated Agents gain the trust of seniors by presenting themselves as expert financial or senior advisors who purport to provide objective investment and financial advice and who purport to possess the special knowledge needed to interpret and understand the complex deferred annuity policies they offer. As part of Defendants’ fraudulent scheme, Affiliated Agents misrepresent that they offer bona fide and objective legal, accounting and financial or estate planning advice, when, in fact, they merely seek to sell deferred annuities trapping seniors in an investment with hidden risks and infirmities, including virtually unfettered discretion to reduce renewal rates to increase CIC’s profits while decimating senior Class Members’ investment returns. Defendants even provide standardized or approved forms to Affiliated Agents for eliciting confidential and sensitive information about the seniors’ assets under the guise of gathering the requisite information for preparing other financial or legal documents.

28. Defendants train Affiliated Agents to target senior citizens by offering financial or estate planning as community service events for the elderly. Defendants encourage Affiliated Agents to use these meetings to gain the trust and confidence needed to lure seniors into providing confidential financial information. Moreover, Defendants’ Affiliated Agents target seniors in advertisements for financial, retirement, long-term care, and estate planning seminars and workshops that are publicized in mass mailings and an array of newspapers. In these targeted solicitations and at the estate planning seminars, Affiliated Agents gain the trust of seniors by presenting themselves

1 as *expert financial advisors* who purport to provide objective investment and financial advice,  
 2 sometimes under the guise of preparing “living trusts” (“trust mills”), and who purport to possess the  
 3 special knowledge needed to interpret and understand the complex deferred annuity policies they  
 4 offer. The meetings are hosted by Affiliated Agents and held in seniors’ homes, hotels, senior  
 5 centers, houses of worship and other locations. As part of Defendants’ and their Affiliated Agents’  
 6 scheme, service providers misrepresent that they offer bona fide legal, accounting, and other types of  
 7 objective advice for financial and/or estate planning, when, in fact, they merely seek to sell the  
 8 senior a deferred annuity, trapping them into an investment with hidden risks and infirmities,  
 9 including discretionary pricing vehicles Defendants can and do use to improve its profit and  
 10 decimate seniors’ returns on their investment.

11 29. Defendants and the Affiliated Agents also promote the marketing and sale of CIC  
 12 deferred annuities to elderly consumers by sponsoring and participating in events directed to  
 13 insurance agents and IMOs who target the senior market (including, but not limited to, those  
 14 identified above). In addition, Defendants and their Affiliated Agents promote training seminars,  
 15 employment opportunities and deferred annuity products in publications such as Senior Market  
 16 Advisor and Life Insurance Selling, which cater to agents targeting senior citizens. Defendants also  
 17 facilitate their Affiliated Agents’ efforts to target the senior market by providing leads for potential  
 18 sales to senior citizens.

#### 19 **D. Defendants’ Uniform Marketing Materials**

20 30. Defendants employ a number of measures in order to maintain tight control over the  
 21 marketing and distribution of their deferred annuity products. For example, as part of Consec  
 22 Marketing’s responsibilities under the management services agreement with CIC, Consec  
 23 Marketing is responsible for recruiting and contracting with CIC’s sales force, including the  
 24 Affiliated Agents. Consec Marketing and the Affiliated Agent enter into a sales agreement. The  
 25 sales agreement authorizes the Affiliated Agent to recruit sub-agents and states that if the sub-agents  
 26 satisfy all requirements, Consec Marketing will contract with that sub-agent so he or she can sell  
 27 CIC’s products. Affiliated Agents who recruit additional sub-agents will be entitled to commissions  
 28

1 based upon the sub-agents' sales. Conseco Marketing reserves the right to revoke an Affiliated  
2 Agent's right to recruit agents.

3 31. The sales agreement further prohibits any Affiliated Agent from in any way  
4 modifying Defendants' forms, policies, procedures, timelines, premiums, credited rates, or making  
5 any guarantees regarding current interest rates, the continuance of any practice or procedure  
6 currently utilized by CIC without express authorization from Defendants. Affiliated Agents further  
7 agree to ensure that the Affiliated Agents, all employees and sub-agents are trained in accordance  
8 with Defendants' standards of market conduct, adhere to Defendants' code of conduct, and are  
9 familiar with the conditions of the policies and the supporting marketing literature made available by  
10 Defendants. The sales agreement also requires the Affiliated Agent to agree that "[o]nly material  
11 provided by the Company shall be used in soliciting policies."

12 32. In accordance with Defendants' sales agreement, Defendants provide Affiliated  
13 Agents with and require the use of uniform sales and marketing materials. Defendants uniformly  
14 require Affiliated Agents to provide Class Members with a standardized benefit summary and  
15 disclosure form and consumer brochure, as well as submit for approval a completed annuity  
16 application. These sales materials, protocols and procedures omit key risks and material adverse  
17 information about the deferred annuities, as more fully discussed below. Defendants instruct the  
18 Affiliated Agents not to elaborate on the information presented in its form annuity contracts and  
19 uniform pre-printed sales illustrations and marketing materials when making a sales presentation to  
20 prospective customers. Defendants do not disclose certain features of its products to the Affiliated  
21 Agents who then, in turn, fail to disclose material adverse information, risks and infirmities to  
22 seniors at the point of sale. The benefit summary and disclosure form provided by Defendants  
23 includes a summary of the features of the deferred annuity product at issue and contains the  
24 Affiliated Agent's verification that he or she did not present information that contradicted the  
25 information in the disclosure form.

26 33. Defendants and authorized representatives provide training to CIC's Affiliated Agents  
27 in the form of annuity road shows and other seminars. However, primary responsibility for the  
28 training of CIC's Affiliated Agents is assumed by the IMOs with whom CIC contracts. Neither CIC

1 nor Conseco Services systematically monitors or audits training received by the Affiliated Agents  
2 from outside sources. Conseco Services on behalf of CIC has contracted with or currently contracts  
3 with IMOs and Affiliated Agents which are notorious for promoting their seminars and sales  
4 techniques directed at increasing sales to senior citizens.

5 34. Defendants have a reputation of offering high commissions. In the past, Defendants  
6 have offered commissions as high as 18%. When Defendants started to lose some of their Affiliated  
7 Agents as a result of poor insurance ratings, Conseco and Conseco Services on behalf of CIC began  
8 a concerted effort to rebuild CIC's sales force and regain the loyalty of their Affiliated Agents. In  
9 order to attract Affiliated Agents back to Defendants, Conseco Services on its own or in conjunction  
10 with CIC, third party consultants, or specific Affiliated Agents designed new high-commission  
11 products and instituted a number of incentives and perks. Defendants recognize that agent  
12 commission is the driving factor in an agent's decision on which insurance company's products to  
13 sell. Defendants sought to reestablish this reputation by offering commissions ranging from  
14 12-15% – well above industry average.

15 35. In addition to acting as the intermediary between Defendants and senior purchasers,  
16 the Affiliated Agents communicate regularly with Defendants and provide input regarding product  
17 development, marketing and other affairs. Affiliated Agents participate in meetings of the Conseco  
18 Field Advisory Council to provide input on product development and marketing strategies.  
19 Affiliated Agents have participated in the development of products marketed by Defendants and are  
20 awarded a national override based upon sales of such co-developed products. Defendants also  
21 revitalized a number of perks and agent initiatives, including offering commission bonuses and  
22 sponsoring Annual Sales Conventions held in exotic locations, which agents qualify for by meeting  
23 certain production requirements. In addition, Defendants offered such other perks as trips to NCAA  
24 tournaments, gift certificates, NASCAR tickets, sales production trips, points redeemable for prizes,  
25 membership in the Winner's Circle, Elite Honors Club, and Pacesetters Club. The Affiliated Agents  
26 attend periodic meetings and conferences also attended by top level management of Defendants.

27 36. By offering these lavish bonuses, rewards, commission and other perks to its  
28 Affiliated Agents, Defendants induce, condone and encourage Affiliated Agents to engage in

1 predatory marketing tactics, including targeting and exploiting the vulnerability and concerns of  
2 senior citizens. For example, with the knowledge and at least tacit approval of Defendants, the  
3 Affiliated Agents persuade senior citizens to convert their savings or liquidate other investments  
4 such as 401ks, 403bs, IRAs, CDs and life insurance policies into their deferred annuities, often  
5 resulting in surrender charges incurred for accessing the senior's money after purchase.

6 37. Defendants' relationship with the Affiliated Agents, who target senior citizens, in  
7 combination with Defendants' control over the materials and information disclosed during the sales  
8 process, facilitates the scheme to defraud senior citizens by withholding information critical to  
9 making an informed investment decision.

10 38. Consecos' Affiliated Agents adhere to the sales procedures, protocols and materials  
11 dictated, prepared and/or approved by Consecos. These sales protocols and procedures, which  
12 include the use of standard annuity marketing materials, illustrations and form contracts created  
13 and/or authorized by Consecos, *omit key risks and material adverse information about the deferred*  
14 *annuities*, as more fully discussed below. Consecos instructs the Affiliated Agents not to elaborate  
15 on the information presented in its form annuity contracts and uniform pre-printed sales illustrations  
16 and marketing materials when making a sales presentation to prospective customers. Consecos does  
17 not disclose certain features of its products to the Affiliated Agents who then, in turn, fail to disclose  
18 material adverse information, risks and infirmities to seniors at the point of sale.<sup>4</sup> As alleged with  
19 more specificity below, Defendants also fail to disclose to Affiliated Agents and prospective senior  
20 purchasers the Defendants' poor financial condition, which adversely impacts the performance and  
21 safety of the deferred products.

22  
23  
24  
25 <sup>4</sup> Upon information and belief, Consecos has changed its agent training protocols and agent  
26 supervision and reporting practices in recent years such that it no longer adheres to statutory  
27 obligations in selling deferred annuities to seniors. At the same time, Consecos has increasingly  
28 relied on independent agents/brokers and IMO's to market and sell its equity-indexed deferred  
annuities.



**E. Defendants' Poor Financial Condition**

39. Between 1982 and 1997, Old Consecos acquired nineteen (19) insurance and related companies and two (2) finance companies. In 1997, Old Consecos started a concerted effort to establish itself as a brand. With respect to its annuity sales, these acquisitions established the ground work for the ultimate success of Consecos's scheme to target and profit sales of deferred annuities to senior citizens.

40. Consecos used its many insurance subsidiaries to fund this pattern of exponential growth through acquisitions. These transactions left the Consecos Group highly leveraged and in a precarious and weak financial condition. From an economic standpoint, the risky ventures of the parent were wildly unsuccessful, particularly the investment in Green Tree Financial, which was a mobile home financing company in poor financial condition when acquired by Consecos, and culminated in Old Consecos seeking protection under Chapter 11 of the U.S. Bankruptcy Code and reorganizing around its insurance operations. Consecos emerged from bankruptcy protection in September 2003.

41. After it emerged from bankruptcy protection, the Consecos Group desired to enhance its financial statements so that it could raise money in the public financial markets as well as regain the confidence of its sales force and customers. Instead of working to achieve stable financial condition, the Consecos Group continued to engage in questionable financial transactions in order to inflate its balance sheet by hundreds of millions of dollars. Most of Consecos's subsidiaries, including Defendants, were controlled by substantially the same management group. Having the same core of decision-makers acting on behalf of the various members of the Consecos Group facilitated the continuation of Consecos's questionable financial practices.

42. This weakened financial condition of the Consecos Group diminished Defendants' ability to pay competitive rates on their deferred annuity products and likewise diminished the safety and security of Defendants' deferred annuity products. This is especially critical with respect to discretionary rates and aspects associated with Defendants' deferred annuity products, such as renewal rates that are set at levels based upon Defendants' discretion. These benefits set at the Defendants' discretion are not part of the minimum guaranteed cash value and corresponding reserve

calculations so the ability of senior Class Member to receive any of these benefits is completely dependent upon Defendants' financial condition. In sum, the receipt of benefits under Defendants' deferred annuity products is dependent upon the claims-paying ability of Defendants.

43. Throughout the Class Period, Consecos extracted huge sums of money from CIC to satisfy its own crushing debt obligations to repay principal and interest, dividends on mandatory redeemable preferred stock of subsidiary trusts, holding company expenses, income taxes and investments. For example, Defendants "upstreamed" monetary payments to their parent entity in the form "dividends" and "service and management" fees to Consecos Services and Consecos Marketing. For example, the following chart illustrates the payment of "upstream dividends" for CIC in years 2000 through 2006:

<b>CIC Year</b>	<b>Dividends</b>	<b>Management Fees</b>	<b>Total</b>
2000	\$54,225,000	\$150,320,482	\$204,545,482
2001	42,025,000	99,118,936	141,143,936
2002	36,825,000	98,818,611	135,643,611
2003	4,361,224	23,960,199	28,321,423
2004	175,000	69,024,299	69,199,299
2005	24,824,512	61,262,198	86,086,710
2006	33,825,000	72,442,137	106,267,137
<b>Total</b>	<b>\$196,260,736</b>	<b>\$574,946,862</b>	<b>\$771,207,598</b>

44. To maximize Consecos' stock price and their own compensation, Consecos executives sought to maximize the Company's publicly announced earnings per share rather than the returns to annuity holders. The siphoning of funds from Defendants continues to perpetuate Defendants' weak and potentially unsound financial condition.

45. Defendants' questionable financial condition is further exacerbated by the poor asset quality of Consecos' and correspondingly Defendants' investment, which placed downward pressure on Defendants to adversely alter marketing rates and decimate returns. Defendants' poor investment asset quality was highlighted in Consecos' 2004 audited financial report, where Consecos designated an investment with an NAIC designation of "4Z" and carrying a value of \$65/\$100 par. The proper designation, as reflected in the NAIC Valuation manual was a far lower designation of "6" (in or at default) and carrying a value of only \$1/\$100 par. Defendants suffered from poor investment asset quality and the undisclosed adverse financial conditions throughout the alleged Class period.

1           46.     CIC and particularly its deferred annuity operations were further adversely impacted  
 2 by down-graded ratings by A.M. Best and other rating agencies. The ratings downgrades have  
 3 generally caused a decline in sales of Defendants' deferred annuity products and policyholder  
 4 surrenders and lapses of profitable lines of business to increase. In some cases, the downgrades have  
 5 also caused defections among its sales force. To maintain an effective sales force, Defendants have  
 6 had to increase the commissions it pays for the sale of its products, institute bonus programs and  
 7 offer other perks. These increased costs were ultimately recouped from policyholders.

8           47.     These events have had a material adverse effect on Consecos Group's financial results.  
 9 Defendants admitted in recent filings with the SEC that "[f]urther downgrades by A.M. Best of S&P  
 10 could have further material and adverse effects on our financial results and liquidity." Thus, even  
 11 after the bankruptcy, the Consecos Group, including Defendants, remains unprofitable and financially  
 12 unsound.

13           48.     The financial condition of Defendants as well as Consecos's other insurance  
 14 subsidiaries will remain weak and precarious because of the routine practice to transfer money,  
 15 assets and expenses between the Consecos's various insurance subsidiaries and holding companies.  
 16 In addition, Consecos's siphoning of funds to pay executives and shareholders as well as the poor-  
 17 asset quality of investments keep Defendants in perpetually poor financial health and adversely  
 18 affect the quality and performance of Defendants' deferred annuity products marketed and sold to  
 19 senior citizens.

#### 20           **F.     Defendants' Failure to Disclose Critical Information**

21           49.     To perpetrate their scheme to defraud senior citizens, Defendants intentionally  
 22 conceal, omit and fail to fully disclose critical information about the attributes and true risks and  
 23 infirmities of their deferred annuities. With seniors as the primary target market for their deferred  
 24 annuities, Defendants develop and use uniform marketing and sales materials that appeal to  
 25 vulnerable elderly investors and exploit their fears of risky or insecure investments and living out  
 26 their retirement years without financial security. In fact, most of Defendants' actuarial  
 27 manipulations described below are expressly undertaken to allow Defendants to sell deferred  
 28 annuities to the most elderly Class Members; without those manipulative devices Defendants could

1 not profitably sell deferred annuities to this segment of the market. Defendants thus target senior  
2 Class Members through the actuarial design of their deferred annuity products.

3         50. Defendants falsely portray their deferred annuities as safe and secure investments that  
4 pay a competitive rate of return to senior Class Members. In reality, Defendants' deferred annuities  
5 are illiquid, poorly performing products that are wholly inappropriate investments for senior citizens.  
6 To lure elderly purchasers with the false appearance of competitive rates, Defendants employ bait  
7 and switch sales tactics involving inflated "teaser" rates that Defendants plan to cut in future years  
8 and illusory bonuses that Defendants recoup through lower rates and surrender penalties. Defendants  
9 fail to disclose material facts about their deferred annuities, thereby misleading senior purchasers on  
10 virtually every critical product characteristic, including: (1) product features, cost and performance;  
11 (2) investment risk; and (3) illiquidity of investment.

12         51. The standardized annuity contracts and uniform marketing and sales materials  
13 prepared and disseminated by Defendants are misleading and deceptive and fail to disclose the  
14 material facts and information set forth below regarding the costs, performance, risks and infirmities  
15 of Defendants' deferred annuity products. These omitted facts and information relate to the  
16 fundamental characteristics of the deferred annuities. Without this information, Class Members are  
17 deprived of the ability to make fully-informed purchase decisions. These omitted material facts, if  
18 disclosed, would reveal that Defendants' deferred annuities are so inferior to other available  
19 investment products and so inappropriate for senior citizens that no fully informed reasonable senior  
20 should purchase them.

21                 **1. Product Features, Cost and Investment Performance**

22                         **a. Undisclosed Commission Costs**

23         52. In their uniform marketing and promotional materials, Defendants describe the  
24 deferred annuities at issue as low cost investment products. Defendants systematically represented  
25 to elderly investors that, unlike mutual funds and other alternate investments, Defendants' deferred  
26 annuities have no loads or sales charges. Defendants intentionally fail to disclose to seniors,  
27 however, that Defendants pay exorbitant sales commissions to the Affiliated Agents, often as high as  
28 12%-15% of the annuitant's initial principal investment and that these high commissions directly

1 reduce the value of the funds invested on behalf of Class Members. Defendants pay Affiliated  
2 Agents additional undisclosed compensation in the form of performance bonuses and overrides, cash  
3 bonuses and free trips to exotic locations. These undisclosed excessive commissions, which are  
4 among the highest paid in the annuity industry, impose transactional costs that are exponentially  
5 higher than the costs associated with alternate investments such as mutual funds, stock index funds  
6 or bonds. In fact, the undisclosed commissions that Defendants pay to the Affiliated Agents  
7 generally exceed the maximum sales charge on mutual funds allowed by National Association of  
8 Securities Dealers. Defendants do not disclose to senior Class Members the existence or the amount  
9 of the high commissions and other compensation paid to Affiliated Agents.

10 53. Because Defendants recover the undisclosed agent commission and compensation  
11 payments in addition to their internal profit spreads, these excessive sales costs effectively confiscate  
12 a substantial portion the seniors' principal investment. The undisclosed commissions, in turn, result  
13 in product features that are particularly detrimental to the senior Class Members, including long  
14 surrender periods, extended maturity dates and steep surrender penalties that lock up seniors'  
15 investment assets for periods extending far beyond their life expectancies. Simply stated, the higher  
16 the sales commission, the higher the surrender charges.

17 54. As a direct result of the undisclosed agent commissions, the true effective cost of  
18 owning Defendants' deferred annuities is far higher than the costs associated with readily available  
19 alternative investments. Because Defendants do not disclose the true effective cost of owning their  
20 deferred annuities (unlike the fully disclosed sales costs and annual expense ratios of a mutual fund  
21 or the annual expenses of a variable annuity), senior Class Members are unable to compare the  
22 annuities' costs with those of alternative investments, nor can they evaluate the risks and costs  
23 associated with Defendants' deferred annuities. For each dollar invested by senior Class Members in  
24 one of Defendants' deferred annuities, the Class Member receives an investment worth only 70-80  
25 cents. Yet Defendants disclose no facts from which a fully informed senior investor could discover  
26 these anemic values.

27 55. Because Defendants pay commissions and other compensation to Affiliated Agents  
28 that greatly exceed the commissions paid to brokers on sales of mutual funds or other investments,

1 the Affiliated Agents have an inherent conflict of interest that precludes them from providing  
2 objective, unbiased financial advice to Class Members. By designing products that pay such above-  
3 market commissions, Defendants intentionally motivate the Affiliated Agents to act in their financial  
4 self-interest and sell Defendants' deferred annuities rather than better performing alternative  
5 investments that pay lower sales commissions. Indeed, Defendants acknowledge in internal  
6 documents that their above-market commissions are the driving force behind Defendants' annuity  
7 sales to seniors. Defendants intentionally conceal these conflicts of interest from senior Class  
8 Members.

9 **b. Undisclosed Subsidies and Teaser Rates**

10 56. To induce seniors to purchase their deferred annuity products, Defendants employ  
11 artificially high "teaser" rates or "subsidies" promising competitive investment returns that will  
12 never be delivered to Class Members. Defendants systematically represent to Class Members that  
13 their deferred annuities pay competitive rates and investment returns comparable to or better than,  
14 alternative investments. Defendants fail to disclose that these high initial rates are unsustainable and  
15 that Defendants will reduce the rates paid on annuities in future years, thereby diminishing the  
16 effective rate of return on the deferred annuities to levels far lower than the returns on readily  
17 available alternative investment products. Defendants issue deferred annuities knowing that, by  
18 product design, the initial rates will be lowered in future years for reasons unrelated to prevailing  
19 interest rates or the performance of the equity market indices. Even if prevailing interest rates were  
20 to remain constant, Defendants must ratchet down the deferred annuities' renewal rates to recoup the  
21 initial rate subsidies, earn their targeted profit spreads and recover commissions and other sales  
22 costs.

23 57. Defendants thus use the artificially high "subsidies" and "teaser" rates as a bait and  
24 switch sales tactic to lure in senior purchasers. Defendants know, but fail to disclose, that they  
25 cannot afford to maintain the "teaser" rates used to induce annuity sales and that the initial rates  
26 therefore misrepresent the returns that Class Members will realize from their investments in deferred  
27 annuities. As alleged above, the Conseco Group was in weak financial condition throughout the  
28 Class Period and was entirely dependent on their operating subsidiaries, including CIC, for cash to

1 make principal and interest payments on crushing debt obligations, dividends on preferred stock,  
2 operating expenses and executive compensation. To pay these obligations while maintaining the  
3 price of its publicly traded stock, Consecro was forced to siphon funds from its operating subsidiaries  
4 through upstream dividends and management fees. As a consequence, CIC was and is constrained to  
5 pay enormous dividends to the Consecro Group and are therefore unable to sustain the artificially  
6 high subsidized “teaser” rates used to attract senior annuity purchasers.

7       58. Unlike other investment products, which pay interest rates fixed by contract or have  
8 established market prices, the deferred annuities grant Defendants virtually unfettered discretion to  
9 determine the renewal rates and returns paid on the annuities. Defendants’ discretion to reduce  
10 renewal rates is limited only by the modest contractual guarantees required by statute, which are  
11 lower than the prevailing rates on risk free investments. Thus, Defendants had the ability to  
12 unilaterally ratchet down or reduce the artificially high initial rates offered on their deferred  
13 annuities. Defendants were unconstrained by the risk that senior Class Members would cash in their  
14 annuities because the Class Members were locked in by the surrender charges and penalties imposed  
15 by Defendants’ deferred annuities.

16       59. Defendants reduce or limit increases in the renewal rates on Class Members’ deferred  
17 annuities, as planned, without disclosing that the initial competitive rates were artificially subsidized  
18 “teaser” rates or that the lower renewal rates are driven by Defendants’ profit spreads rather than  
19 exclusively by prevailing interest rates or the performance of the market indices to which the equity-  
20 indexed annuities are linked. Defendants thus lower or throttle the renewal rates on fixed interest  
21 annuities and Defendants depress the returns on equity-indexed annuities by manipulating the “index  
22 margins,” “caps” and “participation rates” limiting Class Members’ participation in gains  
23 experienced by the applicable equity indices.

24       60. Apart from Defendants’ actions to manipulate the renewal rates and returns on Class  
25 Members’ deferred annuities, Defendants conceal the true costs and loads of equity-indexed  
26 annuities through impenetrable terminology and indecipherable mathematical variables such as  
27 “index margins,” “caps” and “participation” rates and index averages. Defendants apply these  
28 variables, which may be changed from year to year, to credit equity-indexed annuities with only a



1 fraction of the actual gains in the indexed markets. Defendants fail to adequately or meaningfully  
2 disclose the mechanics of these variables or the manner in which they interact with changes in the  
3 equity market indices to determine the actual returns of equity-indexed annuities.

4 61. Defendants intentionally obscure and conceal the penalties and true performance of  
5 Class Members' deferred annuities through false and misleading headings, indistinguishable text  
6 characteristics, confusing verbiage, inconsistent and ambiguous definitions, and "chain" provisions  
7 requiring the reader to refer from one provision to another.

8 **c. Undisclosed Reductions of Cash Surrender Values**

9 62. In addition to manipulating non-guaranteed rates, Defendants also manipulate the  
10 guaranteed cash surrender values of Class Members' deferred annuities to evade and, in some  
11 instances, violate statutes requiring insurance companies to pay certain minimum values to  
12 policyholders. State statutes, generally referred to as the "standard non-forfeiture laws" (or  
13 "SNFL"), require companies selling deferred annuities to guarantee that contract owners will receive  
14 back all or a specified portion of their premiums, together with a minimum interest rate. These  
15 statutes, which were adopted for the protection of policy owners, operate to restrict the duration and  
16 amount of surrender penalties that insurance companies may charge under annuity contracts, by  
17 establishing guaranteed minimum cash surrender values. In addition to the SNFL laws, the states  
18 have adopted other statutes to protect policy owners by establishing minimum cash surrender values.

19 63. Defendants intentionally evade and violate the standard non-forfeiture statutes to  
20 disadvantage senior purchasers through lower cash surrender values (and correspondingly higher  
21 surrender charges) and longer surrender periods than allowed by law. Specifically, in order to pay  
22 seniors lower minimum guaranteed cash values, Defendants improperly mischaracterize deferred  
23 annuity products as flexible premium contracts even though no premiums will be paid after the first  
24 policy year. Defendants also mischaracterize their deferred annuities as fixed-maturity products even  
25 though Defendants routinely allow maturity dates to be changed. And Defendants also  
26 mischaracterize their deferred annuities as "group" products even though the contracts have no  
27 actuarially recognized group characteristics. Defendants intentionally use these actuarial practices as  
28

1 an artifice to pay lower minimum guaranteed cash values in circumvention of the applicable statutes.  
2 By doing so, Defendants intentionally deceive Class Members and state regulators.

3 64. Defendants mischaracterize the nature of their deferred annuities in regulatory filings  
4 in order to pay lower minimum cash surrender values to seniors, thereby allowing Defendants to  
5 charge higher surrender penalties and establish lower reserves to increase the amount of surplus that  
6 can be “upstreamed” in dividend payments to the Consecro Group.

7 65. The SNFL require that single premium annuities pay minimum cash surrender values  
8 that are at least 90% of the premiums paid by annuity owners. Flexible annuities, which involve  
9 multiple premium payments over time, are not covered by the SNFL but are governed instead by  
10 other statutory provisions requiring minimum cash surrender values that are 87 ½ % of the aggregate  
11 premiums.

12 66. Although Defendants know that their deferred annuities are marketed and sold as  
13 single premium annuities and assume in product pricing that very few seniors will ever pay  
14 additional amounts after the initial premium, they mischaracterize their annuity products as  
15 “flexible” premiums in order to pay lower minimum cash surrender values and collect higher  
16 surrender charges under annuities sold to senior Class Members. These reduced cash surrender  
17 values – which are 2½% lower than the cash surrender values that would be paid if Defendants  
18 properly characterized their deferred annuities – result in correspondingly higher surrender charges  
19 having a particularly adverse impact on seniors who have a limited life expectancy and a greater  
20 need for access to their assets to pay for medical care, assisted living or nursing care and other life  
21 necessities.

22 67. Another practice employed by Defendants to pay senior Class Members lower  
23 minimum cash surrender values than allowed by law involves the classification of certain deferred  
24 annuities as “group” contracts. Because the SNFL do not apply to group insurance products,  
25 Defendants improperly characterize various deferred annuities as “group” annuities to evade the  
26 minimum cash surrender value requirements of the SNFL. To be properly classified as a group  
27 product, the annuity purchasers must, among other things, share sufficient common characteristics to  
28 be an actuarially sound group. Defendants sell their deferred annuity products without regard to

1 such common characteristics and the purchasers of Defendants' deferred annuities as a group share  
2 no such common characteristics. Defendants' deferred annuities are in reality "individual" contracts  
3 that pay minimum cash surrender values lower than the statutory requirement that such values be not  
4 less than 90%.

## 5 **2. Investment Illiquidity**

6 68. Defendants also misrepresent the liquidity of the deferred annuities sold to senior  
7 Class Members. Defendants' deferred annuities are extremely illiquid investments as a result of  
8 steep surrender charges lasting for many years. Defendants' annuities impose surrender penalties  
9 lasting as long as 15 years with charges in the early years as high as 22% or more. As alleged above,  
10 senior citizens have a far greater need for access to their assets to pay for medical costs, living  
11 assistance and nursing home care. As such, seniors can ill afford to invest a large portion of their  
12 assets in illiquid investments. Defendants consciously conceal facts that, if disclosed, would reveal  
13 that Defendants' deferred annuity products are far more illiquid than senior Class Members are led to  
14 believe.

### 15 **a. Excessively Long Surrender Charge Periods**

16 69. Many of Defendants' deferred annuities contain surrender charge periods that extend  
17 far beyond the maximum surrender period for senior citizens permitted by the SNFL. Defendants'  
18 deferred annuity contracts provide cash surrender benefits. Consequently, the SNFL require that the  
19 cash surrender value must be at least equal to present value of the annuity at maturity with maturity  
20 defined as no later than 10 years for seniors, discounted at a rate that is 1% higher than the  
21 guaranteed rate, discounted to the date of surrender. In effect, these laws prohibit insurance  
22 companies from selling annuities with optional maturity dates from imposing surrender charges  
23 longer than 10 years for purchasers who are 70 years of age or older. Defendants' deferred annuities  
24 fail to comply with this prospective statutory test. Moreover, as alleged below, Defendants also  
25 mischaracterize certain deferred annuities as fixed-maturity date products even though Defendants  
26 permit changes in the maturity date as a matter of "company practice." Defendants do so to evade  
27 compliance with the SNFL minimum cash value and maximum surrender period restrictions.

70. Defendants' deferred annuities contain surrender periods extending far longer than the 10 year period allowed by the SNFL for seniors and these annuities also impose surrender charge percentages exceeding the maximum percentages allowed by the SNFL. Defendants intentionally design their deferred annuities with excessive surrender percentages and excessively long surrender periods to allow Defendants to pay and recover the exorbitant sales commissions described above. Defendants do not disclose to senior Class Members that their deferred annuities contain excessive surrender charges in violation of the SNFL.

**b. Undisclosed Extended Maturity Dates**

71. The illiquidity of Defendants' deferred annuities is exacerbated by undisclosed extended maturity dates that are often set far beyond the life expectancies of senior Class Members. Under the deferred annuity contracts, the maturity date is the date when annuitization payments begin. Defendants establish maturity dates that are far in the future, typically 20 years or more from the contract issuance date. These extended maturity dates, which reduce the liquidity and flexibility of the annuities, mean that senior Class Members will not be able to receive annuity benefits until they have held the annuities for many years, often at a date that will not occur until after the annuitant's life expectancy.

72. Many of Defendants' deferred annuities contain a fixed maturity date that the owner may not change.<sup>5</sup> Defendants' other deferred annuities allow the owner to change the maturity date but prohibit the selection of a maturity date within the surrender charge period. These restrictions mean that senior Class Members have no contractual right to begin receiving annuity benefits until after they are likely to die or close to their anticipated death.<sup>6</sup> However, Defendants fail to disclose

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<sup>5</sup> Defendants characterize their annuities as fixed-maturity products in order to impose surrender periods longer than the maximum periods allowable for senior purchasers under the SNFL. This also allows Defendants to pay cash surrender values to senior Class Members that are lower than the required statutory minimums. Defendants' deferred annuities are not properly classified as fixed-maturity products due to the "company practice" permitting some annuity owners to effectively change the maturity date to receive restricted annuitization benefits.

<sup>6</sup> As a matter of "company practice," Defendants may permit contract owners to elect to receive annuity benefits at an earlier date. However, Class Members have no contractual right to

1 the applicable maturity date in their uniform marketing and sales materials or in the disclosure  
2 statements that Class Members are required to sign and submit to Defendants. Rather, this critical  
3 information is inconspicuously inserted in the Contract Specifications page of the annuity contract  
4 delivered to Class Members after the sale is complete.

5 **c. Hidden Surrender Charges**

6 73. Although Defendants disclose surrender charge schedules in their deferred annuity  
7 contracts and related marketing materials, Defendants fail to disclose other charges that operate to  
8 increase the penalties for surrendering the annuity, thereby exacerbating the illiquidity of  
9 Defendants' deferred annuities. Defendants impose hidden charges, fees, and loads affecting the  
10 performance of Defendants' deferred annuity products. For example, Defendants retain 50 basis  
11 points per year remaining in the surrender charge period of the annuity owner's proceeds each time it  
12 applies a market value adjustment ("MVA") to surrenders or withdrawals from its deferred annuities.  
13 Defendants disclose the imposition of the market value adjustment, but do not meaningfully disclose  
14 the retention of an extra 50 basis points per year remaining in the surrender charge period on every  
15 transaction to which the market value adjustment applies. Defendants fail to disclose that imposition  
16 of the MVA is intentionally skewed in favor of Defendants. Defendants' claim that the  
17 implementation of the MVA provides protection to them against disintermediation risk and enables  
18 Defendants to offer higher initial credited rates as a lure to attract additional unsuspecting senior  
19 purchasers because the interest rate risk is being passed to the policyholder through the MVA.

20 74. The undisclosed 50 basis point surcharge per year remaining in the surrender charge  
21 period imposed by the MVA has a substantial adverse impact on senior Class Members. Because the  
22 MVA is applied to the number of years remaining within the surrender period, the impact of the 50  
23 basis point surcharge is magnified and may add as much as an additional 4% to the otherwise  
24 applicable surrender charge even if interest rates do not change. If interest rates increase prior to  
25

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26  
27 early annuitization and Defendants' "company practice" imposes severe restrictions on the annuity  
28 benefits that Class Members may receive.

1 surrender, the annuity owner will pay a far higher additional penalty in addition to the explicit  
2 charges disclosed in the surrender charge schedule.

3 75. Defendants do not credit index amounts until the contract anniversary. This requires  
4 Class Members to forfeit all built-up equity gains in the year of surrender or partial withdrawal for  
5 any amounts withdrawn on a date other than the exact contract anniversary.

### 6 **3. Investment Safety**

7 76. Defendants portray their deferred annuities as safe and secure investments having no  
8 principal or market risk. Defendants also emphasize that the minimum annuity values are  
9 “guaranteed.” Defendants fail to meaningfully disclose facts that, if disclosed, would reveal that  
10 Defendants’ deferred annuities actually expose owners to market risk and substantial risk that senior  
11 Class Members will lose investment principal. Defendants also fail to disclose that senior Class  
12 Members’ investment in Defendants’ deferred annuities exposes them to substantial credit risk issues  
13 associated with the poor financial condition of the Consecro Group.

#### 14 **a. The Consecro Group’s Poor Financial Condition**

15 77. As alleged above in paragraphs 39-48, the Consecro Group was in a weakened  
16 financial condition throughout the Class Period. Defendants knew, but did not disclose, that they  
17 intended to siphon hundreds of millions of dollars in dividends from their subsidiaries, including  
18 CIC, to pay the staggering debt load assumed by the Consecro Group in connection with corporate  
19 acquisitions and, later, to generate earnings to support the stock price of Consecro, Inc. Such  
20 dividend payments extract surplus that Defendants could otherwise use to fund more generous  
21 interest credits and more favorable “index margins” or “caps” on equity-indexed annuities.

22 78. Defendants also fail to disclose that many of the Consecro Group operating  
23 subsidiaries, including Consecro, own assets that are or were impaired, non-performing or of  
24 substandard quality. Defendants also knew, but failed to disclose, that they engineered off-balance  
25 sheet and related-party non-arm’s length transactions, mergers lacking economic substance and other  
26 financial legerdemain among the Consecro Group subsidiaries to artificially prop up their reported  
27 financial condition and hide their asset deficiencies.

1           79. The undisclosed financial problems of the Conseco Group adversely impact the  
2 ability of Defendants to maintain renewal rates at competitive levels and create an undisclosed credit  
3 risk to senior Class Members. These financial problems also create the risk, undisclosed to Class  
4 Members, that Defendants will be subjected to ratings downgrades or regulatory restrictions that  
5 exacerbate Defendants' inability to maintain or pay competitive rates to senior Class Members.

6                           **b. Principal Risk**

7           80. Defendants also fail to meaningfully disclose that the interaction of steep surrender  
8 charges, partial guarantees and Defendants' virtually unfettered discretion to change renewal rates  
9 and equity-index variables place senior Class Members' principal investments at substantial risk.

10           81. Defendants' deferred annuities typically do not break even on a contractual basis until  
11 many years in the future. Because the minimum guaranteed cash values are lower than the amount  
12 of premiums paid for periods often exceeding the life expectancy of senior purchasers, most senior  
13 Class Members will die before their deferred annuity assures them of breaking even. Consequently,  
14 Class Members' principal investments in Defendants' deferred annuities are at substantial risk.

15                           **c. Market Risk**

16           82. Defendants' uniform marketing and sales materials represent to prospective  
17 purchasers that, unlike other investments, deferred annuities involve no market risk. Defendants do  
18 not disclose that senior Class Members actually assume market risk when they purchase Defendants'  
19 deferred annuities.

20           83. Due to the exorbitant costs associated with Defendants' deferred annuities and the  
21 resulting low renewal rates for fixed interest annuities and the restrictions on participation in market  
22 gains for equity-indexed annuities, senior Class Members will often fare worse with Defendants'  
23 deferred annuities than with a completely risk-free investment. This risk is exacerbated by  
24 Defendants' use of the undisclosed confiscatory MVA formula.

25           84. For senior Class Members to receive more than a fraction of what they would receive  
26 from a completely risk-free investment, the stock market must increase significantly during the life  
27 of the annuities and Defendants must refrain from opportunistically changing the applicable "index  
28 margins" or "caps."



1           85. As a result, not only is senior Class Members' principal investment at risk, it also is  
2 subject to significant stock market risk.

3 **II. Plaintiff's Individual Transaction**

4           86. Mr. Hansen, a retired machinist, was induced at the age of 68 to purchase a CIC  
5 Equity Indexed Deferred Annuity in August 2000 by Defendants' and Affiliated Agent Zehner's  
6 false, deceptive and misleading practices and representations.

7           87. Previously, in the spring of 1998, Mr. Hansen and his wife attended a seminar given  
8 by Mr. Zehner at their church in San Jose, California. The subject of the seminar was "Living  
9 Trusts." During the seminar, Mr. Hansen and his wife filled out a card enabling Mr. Zehner to come  
10 to their home to ostensibly discuss the possibility of preparing a living trust for the Mr. Hansen. Mr.  
11 Zehner thereafter visited with the Hansens at their home.

12           88. Although Mr. Zehner came to the Hansen family home in 1998 for the purpose of  
13 discussing a "living trust," Mr. Zehner quickly turned the Hansens' attention not to a living trust, but  
14 to his recommendation and investment advice that Mr. Hansen purchase a deferred annuity. Mr.  
15 Zehner represented that the annuity was "safe," and "risk free." Mr. Zehner did not disclose the  
16 risks and infirmities of the annuity investment he successfully sold to Mr. Hansen, nor did Mr.  
17 Hansen ever understand the risks and infirmities of annuity products.

18           89. In or about August, 2000, Mr. Zehner again met with Mr. Hansen and his wife  
19 ostensibly for the purpose of providing financial advice in connection with Mr. Hansen's estate  
20 planning. During this meeting, Mr. Zehner never inquired about or sought information concerning  
21 Mr. Hansen's financial or investment assets necessary to determine whether CIC's deferred annuity  
22 products were even appropriate for Mr. Hansen's needs. Instead, Mr. Zehner's focus was  
23 ascertaining the degree and extent of Mr. Hansen's pre-existing deferred annuity issued by Security  
24 Life Insurance Company ("Security Life") and Mr. Hansen's other liquid assets that could be used to  
25 purchase a new CIC deferred annuity.

26           90. Upon recommending that Mr. Hansen move from the Security Life annuity to a CIC  
27 annuity, in August 2000, Mr. Zehner, in an effort to induce Mr. Hansen to purchase an equity  
28 indexed deferred annuity, represented, among other things, that the CIC annuity was "safe," and

1 “free of risk” and that Mr. Hansen was “guaranteed” to receive “at least a 3% annual interest return,”  
 2 on his principal investment, plus capture the benefit of any “increase in the stock market.”  
 3 Defendants’ point of sale marketing brochure included uniform statements designed to induce a  
 4 purchase of CIC’s deferred annuity by Mr. Hansen and other Class Members, assuring seniors that  
 5 they have “EVERYTHING TO GAIN AND NOTHING TO LOSE,” that with “...an equity indexed  
 6 annuity, you can choose to participate in the upper movement of the...S&P 500...without the  
 7 downside risk,” that “credited gains are locked-in” and that “the *participation rate* declared at issue  
 8 is guaranteed for the life of the annuity.” The participation rate was defined as the percentage of the  
 9 average increase in the S&P 500, minus an “index margin,” that will be credited to the purchasers’  
 10 certificate. Defendants’ marketing materials implored Mr. Hansen to “make a correct choice for  
 11 retirement” while further comforting him that his investment was safe via an assurance that his  
 12 annuity was “backed by the strength of Conseco Annuity Assurance.”

13 91. Mr. Zehner’s representations and recommendation of the CIC equity-indexed annuity  
 14 in response to Mr. Hansen’s expressed desire to diversity by placing a portion of his assets in no-  
 15 risk, profitable investments, induced Mr. Hansen to believe that CIC annuity was a more lucrative  
 16 and better investment than U.S. Treasury securities and that it was both safe and free of any risk.

17 92. At the conclusion of the meeting, Mr. Hansen surrendered his existing Security Life  
 18 deferred annuity and used those proceeds - \$108,194.24 – as a single premium to secure the purchase  
 19 of his Conseco Choice Equity Index Flexible Premium Deferred and Fixed Annuity issued by CIC  
 20 on August 2000 under certificate number CC002509. Mr. Hansen had been “churned.”

21 93. Once he purchased the annuity, Mr. Hansen was effectively locked in. At the time of  
 22 the purchase of his CIC annuity, Mr. Hansen was 68 years of age. Mr. Mr. Hansen’s annuity had a  
 23 maturity date of August 11, 2027, when Mr. Hansen would be 95, and thus would not mature and  
 24 begin to distribute the full contracted benefits to Mr. Hansen until long after his actuarial life  
 25 expectancy – 82 years of age at the time. The CIC annuity also imposed high surrender charges  
 26 (20% graduated over the first 15 years of the annuity – through to August 11, 2015) the duration of  
 27 which would not expire so as to allow Mr. Hansen to freely cash out of or liquidate the policy during  
 28 his actuarial life expectancy without a penalizing surrender charge.

1           94.     At the time of the solicitation and sale of the CIC annuity to Mr. Hansen, in August  
 2 2000, Mr. Zehner, in addition to being a licensed and appointed agent of CIC, was operating an  
 3 insurance “trust mill” targeting senior citizens for deferred annuity sales. Mr. Zehner claimed to  
 4 specialize in living trusts and held himself out to Mr. Hansen, at all times material, as both an  
 5 attorney and an investment advisor. Mr. Zehner developed a relationship of trust and confidence  
 6 with Mr. Hansen, as did Defendants, and Mr. Hansen reposed his trust and confidence in them.  
 7 Indeed, *Defendants acknowledge a relationship of professional “trust and confidence”* with its  
 8 product purchasers, and expressly stated to Mr. Hansen, as it has stated to many other CIC annuity  
 9 consumers and class members:

10           Thank you for choosing Consecro Annuity Assurance Company. You have taken an  
 11 important step in planning your future, and we appreciate the *confidence* and *trust*  
 you have shown in making Consecro Annuity a part of your financial program.

12 Defendants continuously confirmed this relationship of confidence and trust at all times material in  
 13 its dialogue with purchasers and deployed this proclaimed relationship as a selling point with seniors  
 14 in an effort to induce their ongoing trust and confidence with respect to their purchase of CIC  
 15 annuities.

16           95.     At no time did Mr. Zehner disclose to Mr. Hansen the material risks and infirmities of  
 17 the CIC equity-indexed annuity investment he was recommending, including its many risks and  
 18 infirmities, as more fully discussed in Part E above. The failures to disclose the risks and infirmities  
 19 of the annuity investment and concealment thereof by both Defendants and Mr. Zehner, induced Mr.  
 20 Hansen to roll over from the prior annuity into the CIC annuity without his informed consent and  
 21 without knowledge or appreciation of the material risks and infirmities of his investment.

22           96.     Failing to disclose the risks and infirmities of annuities is all the more pernicious  
 23 because, once the annuity is purchased, an owner of the annuity, such as Mr. Hansen, is effectively  
 24 locked into that investment for a lengthy period of time owing to substantial surrender charges that  
 25 would be imposed in the event that the purchaser decided to cash out. This is especially true with  
 26 regard to senior citizens who, by reason of their age, have serious concerns and liquidity needs,  
 27 including potentially being required to fund prolonged illness of themselves or loved ones. Indeed,  
 28 given Mr. Hansen’s age at the time – 68 – and his life expectancy of 14.1 years, Mr. Hansen could

1 not cash out of the policy *during his life expectancy* without paying a significant surrender charge.  
 2 Additionally, Mr. Hansen could not change the maturity date during the 15 year surrender charge  
 3 period and, consequently, his investment was *locked up for the remainder of his actuarial life*  
 4 *expectancy*.

5 97. Defendants also suffered from serious, undisclosed adverse financial issues, including  
 6 the true risks associated with the deferred annuity product when considering Defendants' precarious  
 7 financial condition and the questionable asset quality of its investments, the intent of Defendants to  
 8 lower rates in the future regardless of any change in economic conditions, the high sales commission  
 9 retained by the Affiliated Agent, the ability of Defendants to manipulate the returns through its  
 10 discretionary power to adjust rates, margins and caps, the overall inferior performance of the  
 11 product, and the existence of reasonably comparable investment products, which are not riddled with  
 12 the same defects as Defendants' deferred annuity products.

13 98. Comparing the values of Mr. Hansen's CIC annuity to an alternative investment such  
 14 as a treasury bond reveals that the CIC deferred annuity was *simultaneously more risky and less*  
 15 *favorable* than a treasury bond. Defendants and Mr. Zehner both failed to disclose this material fact  
 16 when Mr. Hansen was churned into the CIC product.

17 99. Mr. Hansen purchased the CIC annuity with the payment of a \$108,191.24 premium.  
 18 At the end of four years he had an account value of \$114,457.82. After a 20% surrender charge this  
 19 provided a cash value of \$91,566.26. The account value after surrender charge is only \$233.08 more  
 20 than the absolute minimum cash value of \$91,333.18. Hence, at the end of four years from purchase,  
 21 Mr. Hansen actually had suffered a return of *negative 4.09%* with respect to his investment in the  
 22 CIC annuity. In comparison, a ten year treasury bond purchased in August 2000 in the principal  
 23 amount of \$108,191.24, plus four years of interest of \$6,307.55 per year, or \$25,230.20, would have  
 24 resulted in a total of \$133,421.44 for a *positive return of 5.83%*. Hence, while Mr. Hansen's CIC  
 25 annuity had a cash value of \$91,566.26 on August 11, 2004 – far less than his initial premium  
 26 payment – had he invested the \$108,191.24 into a ten year treasury bond on August 11, 2000, his  
 27 treasury investment would have been worth \$133,421.44 as of August 11, 2004.

1           100.   Indeed, with respect to the “Maximum Index Margin” of Mr. Hansen’s CIC annuity  
2 used to offset the participation rate, if the relevant index increased 30% and the index “average”  
3 went up 15%, the Maximum Index Margin that could be deployed by Defendants in their discretion  
4 would nonetheless compute such that the consumer was actually credited with *nothing*. This  
5 exemplifies Defendants’ overreaching. A reasonable investor or consumer would not have  
6 understood, recognized or appreciated this when looking at the contract on its face. In addition, a  
7 reasonable investor would not have recognized, understood or appreciated that the methodology used  
8 by Defendants respecting the determination of the “average” increase in the index did not have its  
9 normal meaning but, instead, allowed Defendants to utilize a less favorable approach such as intra-  
10 year averaging, which effectively cutting index performance in half, to the unwitting detriment of  
11 senior consumers.

12           101.   Neither Defendants nor Mr. Zehner told Mr. Hansen that even though the CIC annuity  
13 was being sold and marketed as a single premium annuity and Mr. Hansen paid a single premium,  
14 the annuity’s cash surrender values were computed on a “flexible premium” model. Hence, whereas  
15 Mr. Hansen and all other consumers purchasing a single premium annuity should have received an  
16 initial cash surrender value of at least 90% of the single premium, by designating the annuity as a  
17 “flexible premium,” those purchasers’ initial cash surrender values were only 80%, rather than 90%,  
18 and therefore immediately confiscatory by an additional 10% of Mr. Hansen’s and those purchasers’  
19 principal investment – a significant reduction.

20           102.   In or about July 2004, as a consequence of learning of bad publicity regarding  
21 Defendants’ and Mr. Zehner’s effort in or about July 2004 to “churn” Mr. Hansen yet again into  
22 another annuity, Mr. Hansen cashed-out of the CIC deferred annuity and, as a consequence, suffered  
23 substantial surrender charges at that time and was damaged thereby.

24           103.   Had all the risks and infirmities of the CIC deferred annuity been fully and adequately  
25 disclosed and affirmatively or otherwise made known to consumers, to enable them to make fully  
26 informed investment decisions before purchasing CIC deferred annuities, no reasonable investor  
27 would have purchased such annuities instead of selecting or deciding to place his or her assets in  
28 other investment products which, in fact, were superior. Mr. Hansen was induced by the uniform

1 and false representations of Defendants and Mr. Zehner and their uniform material omissions and  
 2 concealment of material risks and infirmities to purchase Defendants' risky and unsafe investment  
 3 product. At no time prior to the liquidation in 2004 did Mr. Hansen know of, or in the exercise of  
 4 reasonable diligence would he have discovered, the undisclosed and concealed risks and infirmities  
 5 of his investment, nor would he have purchased the annuity had he been adequately and fully  
 6 informed of same.

7 104. Defendants used interstate mail and wire to transmit and receive a variety of materials  
 8 to effectuate the sale of the Conseco deferred annuity to Plaintiff Hansen. Defendants also used the  
 9 mail and wire to process Plaintiff Hansen's deferred annuity application, process the premium  
 10 payment and pay the commission from the sale of the deferred annuity.

## 11 **RICO ALLEGATIONS**

### 12 **III. The CIC Enterprise**

13 105. Defendants are "persons" within the meaning of 18 U.S.C. §1961(3). Plaintiff and  
 14 Class Members are each "persons" within the meaning of 18 U.S.C. §1961(3), and each of them has  
 15 sustained injury to their business or property as a result of the acts and the conduct of Defendants  
 16 described herein.

17 106. The following group of individuals associated in fact as an "enterprise" within the  
 18 meaning of 18 U.S.C. §1961(4) to develop, market and sell CIC's insurance products, including  
 19 deferred annuities to senior citizens: (a) CIC; (b) Conseco Services and its affiliate, Conseco  
 20 Marketing; (c) 40/86 Advisors; (d) Conseco; and (e) the Affiliated Agents. This association in fact is  
 21 referred to herein as the "CIC Enterprise" or the "Enterprise." As alleged more fully in the  
 22 following paragraphs, the CIC Enterprise has an ascertainable and hierarchical decision-making  
 23 structure, an ongoing and continuous existence that is separate from the alleged pattern of  
 24 racketeering activities and members who have existences and activities that are separate and distinct  
 25 from those of the Enterprise.

#### 26 **A. Ascertainable Structure**

27 107. The CIC Enterprise is an ongoing and continuing organization of corporations and  
 28 individuals associated for the common or shared purpose of marketing and selling CIC's insurance

1 products. Each member of the CIC Enterprise has a clearly defined role in the affairs of the  
2 Enterprise.

- 3 • CIC designs deferred annuity products, disseminates uniform marketing materials for  
4 those products, directs the activities of the Affiliated Agents and collects the  
5 proceeds of the Enterprise.
- 6 • Consecro Services provides operational, administrative and management services for  
7 the Enterprise and controls the finances and operations of the Enterprise. Consecro  
8 Services also allocates income illegally obtained from the affairs of the CIC  
9 Enterprise among the members of the Consecro Group. Indeed, because CIC has no  
10 employees of its own, Consecro Services performs virtually all of the business  
11 functions for CIC and the Enterprise.
- 12 • Consecro Marketing contracts with the Affiliated Agents and produces sales and  
13 marketing materials used by members of the Enterprise.
- 14 • 40/86 performs investment advisory services for the Enterprise, including acquisition  
15 of the assets purchased with the annuity proceeds collected from senior Class  
16 Members, determination and execution of the option hedging strategies for equity-  
17 indexed annuities and participation in the rate-setting process for CIC deferred  
18 annuities.
- 19 • The Affiliated Agents market and sell CIC's deferred annuities to senior citizens  
20 throughout the United States. In addition to their marketing and distribution  
21 activities, the Affiliated Agents participate in the design of certain CIC deferred  
22 annuity products and provide input into the features of CIC's deferred annuities and  
23 its annuity operations.

24 108. There is a strict hierarchical operating and decision-making structure governing the  
25 activities of the CIC Enterprise. CIC has no employees; instead, Consecro Services provides all  
26 operational, actuarial, marketing, administrative, compliance, legal and management functions for  
27 CIC. Consecro Services makes all major business and financial decisions for CIC, including those  
28 associated with the affairs of the CIC Enterprise.



1           109. A small core of executives at Consecos Services controls the financial affairs of the  
2 Enterprise and the decisions made by those executives are implemented, in a hierarchical fashion, by  
3 CIC. Consecos Services conducts business and strategic planning for CIC, including its annuity  
4 operations. The assets and proceeds of the CIC Enterprise are controlled by Consecos Services and  
5 these assets and proceeds are routinely allocated and transferred (in the form of dividends, capital  
6 contributions, mergers and reinsurance transactions) among various Consecos subsidiaries by  
7 Consecos Services. Likewise, Consecos Services directs CIC to engage in asset acquisitions,  
8 reinsurance transactions and other related-party transactions involving other members of the  
9 Consecos Group.

10           110. The members of the CIC Enterprise share many common officers. Thus, for example,  
11 during the Class Period, Kenneth Lowell Short, Ron Ruhl, James Crafton and Dennis Taylor served  
12 simultaneously as key executive officers for the Consecos members of the Enterprise – CIC, Consecos  
13 Services, Consecos Management and Consecos. This small core of common executive officers,  
14 together with other operating officers such as William Shea, Tom Blackburn, Brad Corbin, and  
15 Randy Woock, direct and control the affairs of the Enterprise through periodic meetings, planning  
16 sessions, budgeting and business plans and ongoing communications.

17           111. In addition, as part of the Enterprise's hierarchical decision-making structure, CIC  
18 and Consecos Marketing direct and control the activities of the Affiliated Agents through formal  
19 agency contracts, compliance rules and written policies and procedures. As part of Consecos  
20 Marketing's responsibilities under the management services agreement with CIC, Consecos  
21 Marketing is responsible for recruiting and contracting with CIC's sales force, including the  
22 Affiliated Agents. Consecos Marketing and the Affiliated Agents enter into standardized sales  
23 agreements. The sales agreement authorizes the Affiliated Agent to recruit sub-agents and states that  
24 if the sub-agents satisfy all requirements, Consecos Marketing will contract with that sub-agent so he  
25 or she can sell CIC's products. Affiliated Agents who recruit additional sub-agents are entitled to  
26 commissions based upon the sub-agents sales.

27           112. The sales agreement further prohibits any Affiliated Agent from in any way  
28 modifying CIC's forms, policies, procedures, timelines, premiums, credited rates, or making any

1 guarantees regarding current interest rates, the continuance of any practice or procedure currently  
2 utilized by CIC without express authorization. Affiliated Agents further agree to ensure that the  
3 Affiliated Agent, all employees and sub-agent are trained in accordance with CIC's standards.

4       113. Defendants provide Affiliated Agents with and require the use of uniform sales and  
5 marketing materials. Defendants instruct the Affiliated Agents not to elaborate on the information  
6 presented in its form annuity contracts and uniform pre-printed sales illustrations and marketing  
7 materials when making a sales presentation to prospective customers. The sales agreement also  
8 requires the Affiliated Agent to agree that "[o]nly material provided by the Company shall be used."  
9 CIC retains authority to review and approve all marketing materials used by the CIC Affiliated  
10 Agents and to audit the agents' books and records. CIC also determines agent compensation and  
11 requires agent training and internal compliance procedures.

12       114. CIC and Conseco Marketing communicate regularly with the Affiliated Agents by  
13 disseminating policies and procedures, product information and other information on an ongoing  
14 rather than *ad hoc* basis through product materials, web postings, emails and internal publications.

15       115. CIC and Conseco Marketing direct the Affiliated Agents in their activities in a  
16 hierarchical fashion by requiring the sales agents to follow their directives in the marketing and sales  
17 of their annuity and insurance products, including the requirement that all written statements or  
18 materials given to prospective purchasers of these deferred annuity products must receive advance  
19 approval from CIC. Defendants exercise substantial control over the direction of the CIC Enterprise  
20 by, *inter alia*:

21               (a) designing and issuing annuity and insurance products offered for sale to  
22 consumers throughout the United States;

23               (b) designing and distributing marketing and sales materials describing the  
24 features of Defendants' annuity and insurance products;

25               (c) developing uniform sales and marketing materials, standardized contracts,  
26 and uniform sales techniques and presentations including, but not limited to, those materials  
27 developed by Defendants for use by the Affiliated Agents;

28

1 (d) instructing and requiring Affiliated Agents to use standardized sales materials,  
2 uniform sales techniques and presentations developed and/or authorized by Defendants;

3 (e) rewarding sales agents with perks and high commissions for selling  
4 Defendants' annuity and insurance products; and

5 (f) accepting applications for, and issuing annuity and insurance contracts, that  
6 mature after the actuarial life expectancy of the annuitant.

7 116. The Affiliated Agents, in turn, participate in the decision-making structure of the CIC  
8 Enterprise in an ongoing fashion through their membership in numerous councils and committees  
9 established by Defendants. Affiliated Agents associated with CIC participate in meetings of the  
10 Conseco Field Advisory Council to provide input to Defendants on product development and  
11 marketing strategies. More recently, Affiliated Agents have participated in the decision-making  
12 affairs of the Enterprise through membership in the President's Council. Top-producing Affiliated  
13 Agent IMO's are invited to become members of the President's Council to develop new products,  
14 compensation policies and marketing programs. Affiliated Agents also participate in the  
15 development of products in conjunction with CIC and are awarded national override compensation  
16 based upon sales of such co-developed products. Likewise, Affiliated Agents participate in the  
17 decision-making process as members of the Winner's Circle, Elite Honors Program, Pacesetter's  
18 Club, President's Honor Circle, and participation in the Annual Sales Convention.

19 **B. Continuous Existence**

20 117. The CIC Enterprise has had an ongoing and continuous existence during the Class  
21 Period. Throughout the Class Period, the members of the CIC Enterprise associated in fact to market  
22 and sell CIC's products. Defendants developed and marketed a continuous stream of annuity and  
23 insurance products sold through the Affiliated Agents. Likewise, the Affiliated Agents associated  
24 with the Enterprise on an ongoing rather than ad hoc basis. The Affiliated Agents marketed Conseco  
25 annuity and insurance products to consumers on an ongoing basis each year during the Class Period,  
26 they participated actively in the affairs of the Enterprise as members of committees and groups on an  
27 ongoing basis and they have engaged in joint marketing and promotional activities on an ongoing  
28 and continuous basis.

1           118. The CIC Enterprise has displayed a continuity of membership during the Class  
2 Period. CIC, Consecos Services and Consecos have acted continuously in their leadership roles in the  
3 Enterprise, Consecos Management and 40/86 Advisors have provided services to the Enterprise  
4 throughout the Class Period and there has been a stable network of Affiliated Agents participating in  
5 the Enterprise year after year.

6           **C. Separate Existence**

7           119. As alleged more fully below, Defendants have conducted affairs of the CIC  
8 Enterprise through a pattern of racketeering activity. Defendants and their co-conspirators  
9 intentionally conceal, *inter alia*, that CIC's deferred annuities: (1) impose hidden and inflated  
10 charges and expenses that tie up seniors' assets beyond their expected life span and prevent them  
11 from access to funds needed for health and medical care and living expenses; (2) are poorly  
12 performing investments that will experience declining returns because CIC lures senior purchasers  
13 through inflated initial "teaser" rates that Defendants intend to reduce in future years; and (3) carry  
14 substantial undisclosed principal and market risk and other risks resulting from CIC's unsound  
15 financial condition. As a direct result of this conspiracy and fraudulent scheme, Defendants were  
16 able to extract excessive premiums, fees, early withdrawal penalties, and other revenues from  
17 Plaintiff and the Class.

18           120. The CIC Enterprise, and each of its members, exists independently from the  
19 racketeering activities of the Enterprise. Each member of the CIC Enterprise has an existence  
20 separate from their participation in the racketeering activities of the Enterprise. CIC, Consecos  
21 Services, Consecos Management and Consecos are organized and operated as separate corporations  
22 with separate Boards, separate books and records, separate accounts and separate existences for legal  
23 and regulatory purposes. In addition to the deferred annuities sold to seniors by the Enterprise, CIC  
24 markets other insurance products including life insurance, disease insurance and Medicare  
25 supplement insurance. Likewise, CIC sells insurance products to middle-income customers who are  
26 not senior citizens. Also, as alleged below, the Affiliated Agents sell or are authorized to sell CIC  
27 insurance products other than deferred annuities and they also sell CIC deferred annuities to  
28 customers who are not senior citizens.

1           121. The CIC Enterprise also has an existence and structure that is separate and distinct  
2 from other affairs of its members. Members of the CIC Enterprise engage in legitimate business  
3 operations separate and apart from their activities on behalf of the Enterprise.

- 4           • In addition to providing operational, administrative and management services utilized  
5 by the Enterprise, Consecos Services provides similar services to other companies  
6 within the Consecos Group having no relationship to the CIC Enterprise. For example,  
7 Consecos Services provides all operational, administrative and management services  
8 for Consecos Life Insurance Company (which maintains a life insurance product  
9 portfolio consisting of universal life insurance, equity-indexed universal life  
10 insurance, term life, and whole life insurance), Consecos Health Insurance Company  
11 and Consecos Senior Health Insurance Company (which sell healthcare products, such  
12 as cancer insurance, Medicare supplements, home health plans, and long term care  
13 insurance) and Washington National Life Insurance Company (which sells life  
14 insurance products and deferred annuities primarily to educators and small  
15 employers).
- 16          • Consecos Marketing likewise provides marketing services and 40/86 provides  
17 investment advisory services to other members of the Consecos Group that are not  
18 part of the CIC Enterprise. 40/86 also provides investment services to entities  
19 unrelated to Consecos or any of its subsidiaries.
- 20          • The Affiliated Agents sell many insurance products other than CIC deferred  
21 annuities. These other products, unrelated to the Enterprise, include life insurance,  
22 long term care insurance, supplemental insurance, specified disease insurance, and  
23 accident and health insurance. Moreover, because they operate as independent  
24 agents, the Affiliated Agents sell insurance and annuity products issued by many  
25 companies other than CIC. The Affiliated Agents also provide financial advice and  
26 conduct seminars and sales activities that are wholly unrelated to the CIC deferred  
27 annuities or the affairs of the Enterprise.

1           122. Many activities engaged in by the members of the CIC Enterprise in furtherance of  
2 the racketeering activities are not ordinary legitimate business activities and, in fact, would be  
3 inimical to the interests of the Enterprise members if detected by regulatory or law enforcement  
4 officials. The Affiliated Agents' activities in conjunction with fraudulent and abusive "trust mills"  
5 and estate planning seminars, their use of bogus financial or estate planning "designations" to sell  
6 deferred annuities to seniors under false pretenses and their actions to falsely portray themselves as  
7 objective financial planners, while concealing that they are actually insurance agents, are not the  
8 regular business activities of legitimate insurance companies. Where such practices have been  
9 detected, insurance regulators and attorneys' general have revoked the licenses of sales agents and  
10 have initiated enforcement actions against IMOs and insurance companies selling deferred annuities.  
11 Likewise, CIC's actions circumventing insurance regulations to prey upon senior citizens, as alleged  
12 above, are not ordinary business activities of a legitimate insurance company.

13           123. The Affiliated Agents, on behalf of the Enterprise, employed CIC and the "Conseco"  
14 brand to lend an air of legitimacy to their own illicit practices. And by utilizing the IMO Affiliated  
15 Agents rather than its own employees to sell deferred annuities to senior citizens, CIC gained  
16 additional power to perpetrate the fraudulent scheme; CIC was able to reap the enormous profits  
17 generated by the agents' abusive sales practices while, at the same time, insulating itself from the  
18 agents' pernicious conduct by invoking their status as "independent" marketing organizations. In  
19 this manner, the members of the CIC Enterprise functioned together to magnify their potential for  
20 misconduct, the prototypical activities that the RICO statutes are designed to redress.

21           124. The involvement of separate corporations and entities in the CIC Enterprise provides  
22 a separate, ascertainable structure to the Enterprise. In addition, because the members of the CIC  
23 Enterprise perform activities on behalf of the association-in-fact that are separate from the alleged  
24 racketeering activities, including the sale of Conseco products other than deferred annuities to  
25 customers who are not seniors, the Enterprise also has an existence separate from the alleged  
26 racketeering activities themselves. Also, because each of the members of the CIC Enterprise  
27 engages in separate lawful activities apart from their activities on behalf of the Enterprise, each of  
28 them has a separate existence that extends beyond the Enterprise and beyond the alleged

1 racketeering activities themselves. Furthermore, because the members of the CIC Enterprise engage  
2 in conduct on behalf of the Enterprise that are not lawful or regular business activities, the  
3 racketeering activities of the Enterprise are not simply the normal business activities of CIC. For all  
4 of these reasons, the CIC Enterprise has an ascertainable and continuing existence that is separate  
5 from the racketeering activities themselves and the alleged racketeering activities of the Enterprise  
6 are not co-extensive with the ordinary business of CIC.

#### 7 **IV. Interstate Commerce**

8 125. The CIC Enterprise functions, in part, by deceiving senior citizens concerning the  
9 nature and objectivity of the services rendered by persons acting on behalf of the CIC Enterprise.  
10 Persons acting on behalf of the CIC Enterprise seek to disarm senior citizens and unfairly gain their  
11 trust by offering to provide objective and disinterested financial, long-term care or estate planning,  
12 consultation, advice and related services, as well as deferred annuity products. If truly objective and  
13 disinterested, and if not used as a ruse to promote and effectuate the sale of these deferred annuity  
14 products, many of these services and products could be legitimate and non-fraudulent. However,  
15 Defendants and their co-conspirators, through the CIC Enterprise, have engaged in a pattern of  
16 racketeering activity which also involves a fraudulent scheme to increase premium revenue for  
17 Defendants, additional revenue for the Affiliated Agents from commissions, through the sale of CIC  
18 deferred annuities to senior citizens through fraudulent misrepresentations and omissions.

19 126. The CIC Enterprise engages in and affects interstate commerce because it involves  
20 activities across state boundaries, such as the marketing, promotion, advertisement and sale of  
21 inappropriate deferred annuity products to seniors, and the receipt of premiums, commissions, and  
22 surrender charges from the sale of inappropriate deferred annuity products to senior citizens.

23 127. At all relevant times, each participant in the CIC Enterprise was aware of the scheme  
24 to sell seniors inappropriate deferred annuity products, was a knowing and willing participant in the  
25 scheme and reaped profits therefrom.

#### 26 **V. RICO Conspiracy**

27 128. Defendants and the Affiliated Agents have not undertaken the practices described  
28 herein in isolation but as part of a common scheme and conspiracy.



1           129. Defendants and the Affiliated Agents have engaged in a conspiracy to increase or  
2 maintain market share and premium revenue for Defendants, and to generate additional revenue for  
3 Affiliated Agents through high commissions and incentives paid by Defendants for selling deferred  
4 annuities to senior citizens.

5           130. The objects of the conspiracy include: (a) to sell CIC's deferred annuity policies to  
6 seniors; (b) to maximize annuity sales for Defendants; (c) to maximize commissions for Affiliated  
7 Agents; and (d) to maximize the revenues of Defendants, and the Affiliated Agents.

8           131. Defendants and each member of the conspiracy, with knowledge and intent, have  
9 agreed to the overall objectives of the conspiracy and participated in the common course of conduct  
10 to commit acts of fraud and indecency in gaining the trust of elderly citizens, persuading them to  
11 consolidate their assets in a deferred annuity, and to solicit, market and sell such policies to persons  
12 for whom the investment will provide no benefit, but rather, will cause them harm through steep  
13 penalties, complications for loved ones upon their death, tax liability and other costs and expenses.

14           132. Indeed, for the conspiracy to succeed, Defendants and their co-conspirators had to  
15 agree to implement and use the similar devices and fraudulent tactics against their intended targets.  
16 Many instances of common conduct, activity and similar facts evidence the presence of a conspiracy  
17 and exist among Defendants and their co-conspirators including, but not limited to:

18                   (a) similar advertisements and marketing materials with material omissions  
19 and/or vague, misleading, and incomplete language about the adverse material features and key risks  
20 of CIC deferred annuities;

21                   (b) similar plans and methods for sales agents to solicit, market, refer, and sell  
22 CIC's deferred annuities under the guise of providing financial and estate planning for seniors;

23                   (c) similar tactics for steering the class to CIC deferred annuity policies; and

24                   (d) similar agreements between and among Defendants and their co-conspirators  
25 to sell deferred annuity products to seniors, despite industry standards and governmental warnings.

26           133. As a result of the conspiracy, Plaintiff and the Class made payments for deferred  
27 annuity products and other "services" beyond what they would have otherwise.

1 **VI. Predicate Acts**

2 134. Section 1961(1)(B) of RICO provides that “racketeering activity” includes any act  
3 indictable under 18 U.S.C. §1341 (relating to mail fraud) and 18 U.S.C. §1343 (relating to wire  
4 fraud). As set forth below, Defendants have engaged and continue to engage in conduct violating  
5 each of these laws to effectuate their scheme.

6 **A. Violations of 18 U.S.C. §§1341 and 1343**

7 135. For the purpose of executing and/or attempting to execute the above-described  
8 scheme to sell the challenged deferred annuities to senior citizens by omitting material information  
9 regarding the critical attributes and risks of the deferred annuity products, which if disclosed, would  
10 reveal these deferred annuity products to be inferior to alternative investments, Defendants, in  
11 violation of 18 U.S.C. §1341, placed in post offices and/or in authorized repositories matter and  
12 things to be sent or delivered by the Postal Service, caused matter and things to be delivered by  
13 commercial interstate carriers, and received matter and things from the Postal Service and/or  
14 commercial interstate carriers, including, but not limited to, deferred annuity marketing brochures,  
15 annuity disclosure forms, performance illustrations, applications, contracts, training manuals, video  
16 tapes, correspondence, annuitant leads lists, premium and commission payments, reports, data,  
17 summaries, statements and other materials relating to the marketing and sale of Defendants’ deferred  
18 annuities.

19 136. For the purpose of executing and/or attempting to execute the above-described  
20 scheme to defraud or obtain money by means of false pretenses, representations or promises,  
21 Defendants, also in violation of 18 U.S.C. §1343, transmitted and received by wire, matter and  
22 things, which include, but are not limited to, consumer brochures, annuitant applications, annuity  
23 disclosure forms, field memos, correspondence, prospective lead lists, premium and commission  
24 payments, reports, data, summaries, account statements, faxes and other deferred annuity materials.  
25 In addition, pursuant to and as part of the scheme to defraud, Defendants intended to and did receive  
26 payments from Plaintiff and other Class members that were transmitted or cleared through the use of  
27 interstate wires in violation of 18 U.S.C. §1343. Defendants aided and abetted violations of the  
28

1 above laws, thereby rendering them indictable as a principals in the 18 U.S.C. §§1341 and 1343  
 2 offenses pursuant to 18 U.S.C. §2.

3 137. Many of the precise dates of Defendants' fraudulent uses of the U.S. Mail and wire  
 4 facilities have been deliberately hidden and cannot be alleged without access to Defendants' books  
 5 and records. Indeed, the success of Defendants' scheme depends upon secrecy, and Defendants have  
 6 withheld details of their scheme from Plaintiff and class members. Generally, however, Plaintiff can  
 7 describe the occasions on which the predicate acts of mail and wire fraud would have occurred, and  
 8 how those acts were in furtherance of a scheme. They include thousands of communications to  
 9 perpetuate and maintain the scheme, including, among other things:

- 10 (a) processing applications for deferred annuity products;
- 11 (b) processing premium payments from senior citizens;
- 12 (c) paying and receiving commissions for the marketing, referral and sale of
- 13 deferred annuity products to a senior;
- 14 (d) transmitting and receiving materials about Defendants' and their Affiliated
- 15 Agents' financial and estate planning seminars, workshops and other similar events for senior
- 16 citizens;
- 17 (e) disseminating training materials for selling deferred annuities;
- 18 (f) sharing information about prospective senior citizen purchasers of deferred
- 19 annuities; and
- 20 (g) imposing and processing penalties and surrender charges for early access to
- 21 funds trapped in the deferred annuity products.

22 138. The materials sent or received by Defendants via the U.S. Mail, commercial carrier,  
 23 wire or other interstate electronic media, contained, *inter alia*:

- 24 (a) omissions about the key risks and features of CIC deferred annuities,
- 25 including Defendants' poor financial condition, risk to principal, and other market risks;
- 26 (b) omissions about the significant commissions, sales loads and expenses,
- 27 subsidies, teaser rates, and historical and investment yields associated with CIC deferred annuities;
- 28

1 (c) omissions regarding reductions to the cash surrender value of CIC's deferred  
2 annuity products;

3 (d) false or misleading representations that the Affiliated Agents provide  
4 objective financial advice to assist the class in crafting their financial and estate plans;

5 (e) omissions about the inappropriateness of deferred annuity policies for seniors,  
6 as well as the drawbacks of such policies, such as illiquidity of CIC's deferred annuities, steep  
7 penalties for withdrawal prior to the maturity date, extended maturity dates, and other hidden  
8 surrender charges;

9 (f) materials failing to disclose the existence and effect of commissions paid to  
10 Affiliated Agents by Defendants, including the conflicts of interest created by the payments and as  
11 part of the conspiracy; and

12 (g) invoices and payments related to Defendants' and Affiliated Agents' improper  
13 scheme.

14 139. Defendants' corporate headquarters have communicated by U.S. Mail and by  
15 facsimile with various regional offices and subsidiaries, divisions and other insurance entities in  
16 furtherance of their scheme with the Affiliated Agents.

17 140. Defendants' omissions of material facts, acts of concealment and failures to disclose  
18 were knowing and intentional, and made for the purpose of deceiving Plaintiff and the Class, selling  
19 lucrative deferred annuity policies, and entitling the Affiliated Agents to high commissions from  
20 Defendants.

21 141. Defendants and their co-conspirators either knew or recklessly disregarded the fact  
22 that their omissions and misrepresentations were material and were relied upon by Plaintiff and the  
23 Class as shown by their payments for deferred annuity policies placed with Defendants, as well as  
24 other fees for financial planning advice.

25 142. Plaintiff and the Class relied, to their detriment, on Defendants' fraudulent material  
26 omissions and misrepresentations, which were made by means of Web sites, mass mailings,  
27 newspaper advertisements, telephone calls, marketing materials and virtually uniform  
28

1 representations or omissions. Plaintiff's and the Class' reliance is evidenced by their payments made  
2 for services and for insurance products to Defendants.

3 143. Defendants knew Plaintiff and the Class relied on their misrepresentations and  
4 omissions about the pricing and advantages or disadvantages about certain insurance policies and/or  
5 insurance carriers. Defendants knew that annuitants would incur substantial cost as a result.

6 144. As a result, Defendants have obtained money and property belonging to the Plaintiff  
7 and Class Members, and Plaintiff and the Class have been injured in their business or property by  
8 Defendants' overt acts of mail and wire fraud, and by their aiding and abetting each other unnamed  
9 co-conspirator's acts of mail and wire fraud.

## 10 **VII. Pattern of Racketeering Activity**

11 145. Defendants have engaged in a "pattern of racketeering activity," as defined by 18  
12 U.S.C. §1961(5), by committing or aiding and abetting in the commission of at least two acts of  
13 racketeering activity, *i.e.*, indictable violations of 18 U.S.C. §§1341 and 1343 as described above,  
14 within the past ten years. In fact, Defendants have committed or aided and abetted in the  
15 commission of countless of acts of racketeering activity. Each racketeering act was related, had a  
16 similar purpose, involved the same or similar participants and method of commission, had similar  
17 results, and impacted similar victims, including the Plaintiff and other members of the Class.

18 146. The multiple acts of racketeering activity that Defendants committed and/or conspired  
19 to, or aided and abetted in the commission of, were related to each other and amount to and pose a  
20 threat of continued racketeering activity, and therefore constitute a "pattern of racketeering activity"  
21 as defined in 18 U.S.C. §1961(5).

## 22 **VIII. RICO Violations**

23 147. Section 1962(c) of RICO provides that it "shall be unlawful for any person employed  
24 by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign  
25 commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs  
26 through a pattern of racketeering activity...." Through the pattern of racketeering activities outlined  
27 above, Defendants have conducted and participated in the affairs of the CIC Enterprise.

1           148. Defendants willfully agreed to, and did, materially participate, directly or indirectly,  
2 in the conduct or the affairs of the CIC Enterprise through a pattern of racketeering activity  
3 comprised of numerous acts of mail fraud and wire fraud, and so participated in violation of 18  
4 U.S.C. §1962(c).

5           149. Additionally, Section 1962(d) of RICO makes it unlawful “for any person to conspire  
6 to violate any of the provisions of subsection (a), (b), or (c) of this section.” In violation of 18  
7 U.S.C. §1962(d), Defendants conspired with their Affiliated Agents to violate 18 U.S.C. §1962(c) as  
8 described herein. Various other persons, firms and corporations, not named as defendants in this  
9 Complaint, have participated as co-conspirators with Defendants, and its Affiliated Agents in these  
10 offenses and have performed acts in furtherance of the conspiracy.

11           150. Plaintiff and the Class have been injured in their property by reason of Defendants’  
12 violations of 18 U.S.C. §§1962 (c) and (d), including lost access to needed funds, unnecessary and  
13 concealed fees, charges and penalties that they would not have otherwise incurred, expenses to hire a  
14 financial planner and/or attorney and lost value in previous investments that they would not have  
15 otherwise incurred. In the absence of Defendants’ violations of 18 U.S.C. §1962(c) and (d), Plaintiff  
16 and the Class would not have incurred these costs and expenses, or they would have incurred less.

17           151. The injuries of Plaintiff and the Class were directly and proximately caused by  
18 Defendants’ racketeering activity.

#### 19                   **FRAUDULENT CONCEALMENT AND EQUITABLE TOLLING**

20           152. Defendants have affirmatively and fraudulently concealed its unlawful scheme,  
21 conspiracy and course of conduct from Plaintiff and the Class. Plaintiff and other Class Members  
22 did not know, and could not reasonably have known, of Defendants’ fraudulent scheme and could  
23 not have reasonably discovered the falsity of Defendants’ representations, advertising and similar  
24 documents, nor could Plaintiff and the Class reasonably have known the concealed information  
25 including, in particular, the undisclosed and concealed risks and infirmities of the investments until  
26 shortly before the filing of this Complaint.

27           153. To this day, Defendants continue to fraudulently conceal its practices from the Class  
28 and public alike. Defendants have refused to release or provide information about their practices in a

1 way that Plaintiff and/or the Class could have discovered its fraudulent scheme and practices.  
2 Although the initial decisions to engage in these practices were made years ago, Defendants have  
3 repeatedly decided since to continue concealing its fraudulent practices.

4 154. Defendants have uniformly trained their sales force and other representatives not to  
5 disclose its fraudulent practices described herein. Defendants did not disclose its practices in any of  
6 its policies or sales and marketing materials provided to Plaintiff and the Class.

7 155. As a result of the foregoing, Plaintiff and the Class could not reasonably discover the  
8 unlawful and unethical practices described herein and did not do so until no earlier than by the  
9 advent of this lawsuit. The vast majority of Class Members still do not know that they have been  
10 injured by Defendants' conduct.

11 156. Defendants' conduct is continuing in nature. There is a substantial nexus between the  
12 fraudulent conduct that has occurred within the statute of limitations and the misconduct prior to that  
13 time. The acts involve the same type of illicit practices and are recurring, continuous events.

14 157. The statute of limitations applicable to any claims brought by Plaintiff or other Class  
15 Member as a result of the conduct alleged herein has been tolled as a result of Defendants'  
16 fraudulent concealment.

### 17 **CLASS ACTION ALLEGATIONS**

18 158. Pursuant to Fed. R. Civ. P. 23(b)(2) and/or (b)(3), Plaintiff bring this nationwide class  
19 action on behalf of themselves and all other senior citizens (persons age 65 and older at the time of  
20 purchase) who within the applicable statute of limitations of the date of the commencement of this  
21 action, purchased one or more CIC deferred annuities.

22 159. Excluded from the Class are Defendants and its directors, officers, predecessors,  
23 successors, affiliates, agents, co-conspirator and employees, as well as the immediate family  
24 members of such persons.

25 160. All Class Members have suffered injury to their property by reason of Defendants'  
26 scheme and unlawful course of conduct, in that they paid for insurance policies that were worth only  
27 a fraction of their represented value and lost value in comparison to traditional investments such as  
28



1 stock, mutual funds, bond funds, certificates of deposit and money market funds. Class Members  
2 also have suffered or could suffer substantial early withdrawal penalties.

3 161. The Class is reasonably estimated to be in the thousands or tens of thousands and is  
4 thus so numerous that joinder of all its members is impracticable. The precise number of Class  
5 Members and their addresses are unknown to Plaintiff, but can be ascertained through appropriate  
6 discovery of Defendants' records. Class Members may be notified of the pendency of this action by  
7 publication and/or other notice.

8 162. There is a well-defined community of interest in the relevant questions of law and  
9 fact affecting putative class members. Common questions of law and fact predominate over any  
10 individual questions affecting class members, including, but not limited to, whether: (a) Defendants  
11 uniformly omitted key risks and material information from Plaintiff and the Class; (b) Defendants  
12 were aware that deferred annuities were inferior investment vehicles, particular for senior citizens;  
13 (c) Defendants improperly solicited, referred, marketed, issued or sold deferred annuities to senior  
14 citizens, including Plaintiff and the Class; (d) Defendants engaged in mail and/or wire fraud; (e)  
15 Defendants engaged in a pattern of racketeering activity; (f) the CIC Enterprise is an "enterprise"  
16 within the meaning of 18 U.S.C. §1961(4); (g) Defendants conducted or participated in the affairs of  
17 the CIC Enterprise through a pattern of racketeering activity in violation of 18 U.S.C. §1962(c); (h)  
18 Defendants conspired with Affiliated Agents and other unnamed co-conspirators to commit  
19 violations of the racketeering laws in violation of 18 U.S.C. §1962(d); (i) Defendants committed  
20 elder abuse as defined in Cal. Welf. & Inst. Code §15600 *et seq.*; (j) Defendants committed unfair,  
21 unlawful and/or fraudulent business practices, in violation of Cal. Bus. & Prof. Code §17200, in its  
22 marketing, promotion, solicitation, sales and issuance of deferred annuities to Plaintiff and Class  
23 Members; (k) Defendants engaged in false and misleading advertising in violation of Cal. Bus. &  
24 Prof. Code §17500 *et seq.*; (l) Defendants fraudulently concealed information about deferred  
25 annuities from Plaintiff and the Class in violation of California law; (m) Defendants breached its  
26 obligation of good faith to Plaintiff and the Class; (n) Defendants has been unjustly enriched at the  
27 expense of the Class; (o) Plaintiff and the Class are entitled to damages; and (p) the Class is entitled  
28 to injunctive, declaratory, and/or other relief.

1           163. The claims of Plaintiff and the other Class Members have a common origin and share  
2 a common basis. The claims originate from the same illegal, fraudulent conspiracy on the part of  
3 Defendants, Affiliated Agents, and other unnamed co-conspirators and their acts in furtherance  
4 thereof, as well as the conduct of their co-conspirators. Plaintiff's claims are typical of those of the  
5 absent Class Members. If brought and prosecuted individually, the claims of each Class Member  
6 would require proof of many of the same material and substantive facts, rely upon the same remedial  
7 theories and seek the same relief.

8           164. Plaintiff will fairly and adequately protect the interests of the Class and has no  
9 interests adverse to or that directly and irrevocably conflict with the interests of other Class  
10 Members. Plaintiff is willing and prepared to serve the Court and the putative Class in a  
11 representative capacity with all of the obligations and duties material thereto. Plaintiff has retained  
12 the services of counsel, identified below on the signature page, who are experienced in complex  
13 class-action litigation and in particular class actions involving insurance matters. Plaintiff's counsel  
14 will adequately prosecute this action, and will otherwise assert, protect and fairly and adequately  
15 represent Plaintiff and all absent Class Members.

16           165. The prosecution of separate actions by individual Class Members would create a risk  
17 of inconsistent or varying adjudications, which would establish incompatible standards of conduct  
18 for the parties opposing the class. Such incompatible standards of conduct and varying adjudications  
19 on the same essential facts, proof and legal theories would also create and allow the existence of  
20 inconsistent and incompatible rights within the Class.

21           166. A class action is superior to other methods for the fair and efficient adjudication of  
22 the controversies raised in this Complaint because: (a) individual claims by the Class Members  
23 would be impracticable as the costs of pursuit would far exceed what any one Class Member has at  
24 stake; (b) little individual litigation has been commenced over the controversies alleged in this  
25 Complaint, and individual class members are unlikely to have an interest in separately prosecuting  
26 and controlling individual actions; (c) the concentration of litigation of these claims in one Forum  
27 will achieve efficiency and promote judicial economy; and (d) the proposed class action is  
28 manageable.

**COUNT I**

**Violation of the Racketeer Influenced and Corrupt  
Organizations Act, 18 U.S.C. Section 1962(c)**

167. Plaintiff and the Class repeat and reallege all allegations contained in the paragraphs above as if set forth separately in this Claim for Relief.

168. This claim arises under 18 U.S.C. §1962(c), which provides in relevant part:

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity . . . .

169. In violation of 18 U.S.C. §1962(c), Defendants have conducted or participated, directly or indirectly, in the conduct of the affairs of the CIC Enterprise through a "pattern of racketeering activity," as defined by 18 U.S.C. §1961(5). Therefore, Defendants have violated 18 U.S.C. §1962(c).

170. As a result and by reason of the foregoing, the Plaintiff and Class Members have been injured, suffered irreparable harm and sustained damage to their business and property, and are therefore entitled to recover actual and treble damages, and their costs of suit, including reasonable attorney fees, pursuant to 18 U.S.C. §1964(c).

**COUNT II**

**Violation of the Racketeer Influenced and Corrupt  
Organizations Act, 18 U.S.C. Section 1962(d)**

171. Plaintiff and the Class repeat and reallege all allegations contained in the paragraphs above as if set forth separately in this Claim for Relief.

172. This claim arises under 18 U.S.C. §1962(d), which provides in relevant part:

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection . . . (c) of this section.

173. Defendants' conspiracy to defraud the Plaintiff and other Class Members of their money and property from the sale of inferior deferred annuities pursuant to the scheme described above violates 18 U.S.C. §1962(d).

174. As a result and by reason of the foregoing, the Plaintiff and Class Members have been injured, suffered irreparable harm and sustained damage to their business and property, and are

1 therefore entitled to recover actual and treble damages, and their costs of suit, including reasonable  
2 attorney fees, pursuant to 18 U.S.C. §1964(c).

3 175. In addition, as set forth above, Defendants have violated 18 U.S.C. §§1962(b), (c),  
4 and (d), and will continue to do so in the future. Enjoining Defendants from committing these RICO  
5 violations in the future and/or declaring their invalidity is appropriate pursuant to 18 U.S.C.  
6 §1964(a), which authorizes the district courts to enjoin violations of 18 U.S.C. §1962.

### 7 **COUNT III**

#### 8 **Financial Elder Abuse, California Welfare 9 & Institutions Code Section 15600 *et seq.***

10 176. Plaintiff Hansen and the Class repeat and reallege all allegations contained in the  
11 paragraphs above as if set forth separately in this Claim for Relief.

12 177. Defendants' conduct constitutes financial abuse under Cal. Welf. & Inst. Code  
13 §15657.5 *et seq.*, as defined in Cal. Welf. & Inst. Code §15610.30. California Welfare and  
14 Institutions Code §15610.30(a) provides in relevant part:

15 (a) "Financial abuse" of an elder or dependent adult occurs when a person or  
entity does any of the following:

16 (1) Takes, secretes, appropriates, or retains real or personal property of an  
17 elder or dependent adult to a wrongful use or with intent to defraud, or both.

18 (2) Assists in taking, secreting, appropriating, or retaining real or  
19 personal property of an elder or dependent adult to a wrongful use or with  
intent to defraud, or both.

20 178. At all relevant times, Defendants took and/or assisted in the taking of property from  
21 Plaintiff Hansen and the Class (who are all age 65 or older) for its own wrongful use and/or with  
22 intent to defraud. Plaintiff Hansen and the Class trusted and relied on Defendants.

23 179. Defendants manipulated Plaintiff Hansen and the Class into purchasing deferred  
24 annuities.

25 180. Defendants aided and abetted the Affiliated Agents in accomplishing the wrongful  
26 acts. In doing so, Defendants acted with an awareness of its wrongdoing and realized that its  
27 conduct would substantially assist the accomplishment of the wrongful conduct.  
28

181. In performing these acts, Affiliated Agents either acted as agents of Defendants, or Defendants ratified such acts, or both.

182. Defendants' wrongful acts were done maliciously, oppressively and with the intent to mislead or defraud, thereby warranting punitive and exemplary damages or appropriate in an amount to be ascertained according to proof pursuant to Cal. Civ. Code §3294 *et seq.*

183. Under Cal. Welf. & Inst. Code §15657.5 *et seq.*, Defendants are liable for reasonable attorneys' fees and costs for investigating and litigating this claim.

184. Under Cal. Civ. Code §3345, Defendants are liable for treble damages and penalties because: (a) Defendants knew or should have known its conduct was directed as to a senior citizen; (b) Defendants' conduct caused a senior citizen to suffer substantial loss of property set aside for retirement, and assets essential to their health and welfare; (c) Plaintiff Hansen and the Class are senior citizens who are more vulnerable than others to Defendants' conduct because of their age, impaired understanding, impaired health or restricted mobility; and (d) Plaintiff Hansen and the Class actually suffered substantial physical, emotional and economic damages resulting from Defendants' conduct.

185. Under Cal. Welf. & Inst. Code §15657, Defendants are liable to Plaintiff Hansen and the Class for their pain and suffering.

#### COUNT IV

##### **Violation of California Business & Professions Code Section 17200 *et seq.***

186. Plaintiff Hansen and the Class repeat and reallege all allegations contained in the paragraphs above as if set forth separately in this Claim for Relief.

187. California Business and Professions Code §17200 prohibits any "unlawful . . . business act or practice." Defendants have violated §17200's prohibition against engaging in an unlawful act or practice by, *inter alia*, the following:

(a) violating the statutes prohibiting Defendants' conduct, as described herein, including violations of RICO, 18 U.S.C. §1962;

1 (b) violating the California Consumers Legal Remedies Act (“CLRA”), Cal. Civ.  
2 Code §1750 *et seq.*;

3 (c) violating Cal. Bus. & Prof. Code §17500 *et seq.*;

4 (d) violating Cal. Ins. Code §§330-334; 762; 780; 781; 785; 787(a), (i), (k); 789.8  
5 *et seq.*; 790 *et seq.*; 791.03 *et seq.*, 1861.03 *et seq.*; 10127.10; 10127.13; and 10509 *et seq.*;

6 (e) violating Cal. Welf. & Inst. Code §§15610.30, 15656 and 15657 *et seq.*;

7 (f) violating Cal. Civ. Code §§1689.5 *et seq.*, 1709, 1710, 1572, 1573 and 1575;  
8 and

9 (g) violating or aiding and abetting a violation of Cal. Corp. Code §§25230 and  
10 25235.

11 188. Plaintiff Hansen reserves the right to allege other violations of law which constitute  
12 other unlawful business acts or practices. Such conduct is ongoing and continues to this date.

13 189. California Business and Professions Code §17200 also prohibits any “unfair . . .  
14 business act or practice.” As detailed in the preceding paragraphs, Defendants engaged in a  
15 systematic scheme to sell deferred annuities to Plaintiff and the Class, in violation of federal and  
16 state law, and the fundamental policies delineated in statutory provisions. Defendants gained the  
17 trust of Plaintiff and the Class, had access to their financial information and sold them deferred  
18 annuities – all the while knowing deferred annuities are inappropriate for seniors. As a result,  
19 Defendants engaged in unfair business practices prohibited by Cal. Bus. & Prof. Code §17200 *et seq.*

20 190. California Business and Professions Code §17200 also prohibits any “fraudulent . . .  
21 business act or practice.” As detailed in the preceding paragraphs, Defendants’ conduct was likely to  
22 deceive Plaintiff Hansen, the class and the public by, *inter alia*, representing that they were  
23 providing objective financial or estate planning, and making misrepresentations and omissions about  
24 the disadvantages of purchasing a deferred annuity as a senior citizen, including the steep surrender  
25 charges and lengthy maturation periods that exceed the life expectancy of Plaintiff Hansen and other  
26 members of the Class.

191. Defendants aided and abetted its Affiliated Agents in accomplishing the wrongful acts. In doing so, Defendants acted with an awareness of its wrongdoing and realized that its conduct substantially assisted in the accomplishment of the wrongful conduct.

192. As a result of Defendants' practices, Plaintiff Hansen and other Class Members have incurred financial losses, including access to needed funds, unnecessary and concealed fees, charges and penalties that they would not have otherwise incurred, expenses to hire a financial planner and/or attorney and the lost value in previous investments that they would not have otherwise incurred.

193. Unless Defendants are enjoined from continuing to engage in the unlawful, fraudulent and unfair business practices described above, members of the general public residing within the United States, including California, will continue to be damaged.

194. Pursuant to Cal. Bus. & Prof. Code §17203, Plaintiff Hansen seek an order requiring Defendants to immediately cease such acts of unlawful, unfair and fraudulent business practices and requiring it to return the full amount of money improperly collected – including, but not limited to, commissions and profits from the sale of annuities and income derived from penalties and fees – to all those who have paid them, plus interest and attorneys’ fees.

**COUNT V**

**Violation of California Business & Professions Code Section 17500 *et seq.***

195. Plaintiff Hansen and the Class repeat and reallege all allegations contained in the paragraphs above as if set forth separately in this Claim for Relief.

196. Defendants have intentionally issued false or misleading marketing materials and advertisements about the deferred annuity products that it sells. Defendants' uniform sales materials and standardized annuity contract forms misled and deceived Plaintiff Hansen and the Class as to the material features and key risks of its deferred annuities.

197. Defendants have intentionally issued false or misleading advertisements soliciting seniors to attend seminars and workshops and other events for financial and estate planning, without adequately disclosing that Defendants intend to sell them insurance policies.





1 annuities to senior citizens assumed fiduciary duties to Plaintiff and the Class. Defendants assumed  
2 a fiduciary duty and represented that the relationship was one of *trust* and *confidence* with respect to  
3 seniors' purchases of CIC's deferred annuities.

4       206. These entities and Defendants owed to Plaintiff and members of the Class the highest  
5 duties of loyalty, honesty, fidelity, trust, and due care in their fiduciary obligations, and were and are  
6 required to use their utmost ability to provide estate planning and investment advice in a fair, just  
7 and equitable manner, and to act in furtherance of the best interests of Plaintiff and the Class so as to  
8 benefit their clients, and not themselves.

9       207. As set forth above, Defendants and their Affiliated Agents each breached their  
10 obligations and fiduciary duties of care, loyalty, reasonable inquiry, oversight, good faith and  
11 supervision, by *inter alia*:

12               (a) Failing to disclose the true characteristics of the deferred annuities sold to  
13 senior citizens, including the material costs, risks and potential returns related to its deferred  
14 annuities;

15               (b) Unreasonably and in bad faith refusing to give sufficient consideration to  
16 Plaintiff's welfare rather than their own financial interests;

17               (c) Churning existing senior citizen life insurance and/or annuity policyholders,  
18 and using deceptive and misleading standardized marketing materials in violation of Cal. Ins. Code  
19 §§781 and 10509.8;

20               (d) Failing to competently supervise and monitor their employees;

21               (e) Making material omissions of fact that the IMOs marketing and selling of  
22 Defendants' annuities were "independent;" and

23               (f) Maintaining an illegal marketing scheme and conspiracy in violation of  
24 §1961(1)(B) of RICO to sell annuity insurance to senior citizens.

25       208. As described herein, Defendants and their Affiliated Agents acting for or in concert  
26 with Defendants, knowingly or recklessly breached their fiduciary duties by orchestrating, devising,  
27 carrying out, participating in, and/or failing to prevent, terminate, or timely correct the wrongdoing  
28 alleged herein.



**COUNT VIII**

**Fraudulent Concealment,  
Cal. Civ. Code Section 1710 *et seq.***

216. Plaintiff Hansen and the Class repeat and reallege all allegations contained in the paragraphs above as if set forth separately in this Claim for Relief.

217. Defendants intentionally misrepresented or concealed the following material information from Plaintiff Hansen and the Class:

(a) the key risks and material features of CIC deferred annuities, including information concerning the interest crediting rate and bonus features;

(b) the disadvantages of buying a deferred annuity, including the tax and estate consequences and penalties, and lack of access to their annuity investments within their lifetime;

(c) the significant commissions that Affiliated Agents earn from the sale of deferred annuities to senior citizens, including Plaintiff and the Class;

(d) the surrender charges, penalties and other fees and expenses incurred upon early withdrawal or death by obscuring and hiding references thereto; and

(e) material information concerning its expense ratios, commissions paid and other sales charges, costs of insurance, interest rate spreads and other underwriting assumptions.

218. Plaintiff Hansen and the Class relied on these representations and omissions, as shown by their purchase of the deferred annuities and payment of premiums and other charges and fees.

219. Defendants performed the wrongful acts with the intent of gaining its own financial advantage to the disadvantage of Plaintiff Hansen and the Class.

220. Defendants aided and abetted their Affiliated Agents in accomplishing the wrongful acts. In doing so, Defendants acted with an awareness of its wrongdoing and realized that its conduct would substantially assist the accomplishment of the wrongful conduct.

221. In performing these acts, each Affiliated Agent either acted as an agent of Defendants, Defendants ratified such acts or both.



1           (b)     using deceptive and misleading materials, which failed to adequately disclose  
2 the disadvantages of buying a deferred annuity, including penalties and lack of access to their  
3 annuity investments within their lifetime;

4           (c)     failing to disclose the significant commissions that Affiliated Agents earn  
5 from the sale of annuities to Plaintiff and the Class;

6           (d)     obscuring and hiding references to the surrender charges, penalties and/or  
7 other fees incurred upon early withdrawal;

8           (e)     drafting and using form annuity contracts that fail to properly apprise seniors  
9 of required information and in the required format about the surrender period and associated  
10 surrender penalties in violation of Cal. Ins. Code §10127.13;

11           (f)     failing to consider Plaintiff's and the Class' welfare above its own;

12           (g)     failing to comply with state law, industry standards and/or internal policies  
13 and by selling deferred annuities to seniors after issuing without performing full and complete  
14 investigations as to appropriateness of the annuities sold to Plaintiff;

15           (h)     unfairly and deceptively making discretionary rate changes to strengthen its  
16 weakened financial condition at the expense of purchasers and owners of its annuities and thereby  
17 decimating returns on investment; and

18           (i)     failing to competently train and supervise their Affiliated Agents and/or  
19 employees.

20           228.    As a proximate result of the aforementioned acts and omissions of Defendants,  
21 Plaintiff and the Class have suffered damages in a sum to be proven at the time of trial. It has also  
22 become necessary for Plaintiff to retain counsel to recover amounts due under the contracts.

23           229.    The aforementioned acts were performed maliciously, fraudulently and oppressively,  
24 thereby entitling Plaintiff and the Class Members to punitive damages in an amount appropriate to  
25 punish Defendants.

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**COUNT X**

**Unjust Enrichment and Imposition of Constructive Trust**

230. Plaintiff and the Class repeat and reallege all allegations contained in the paragraphs above as if set forth separately in this Claim for Relief.

231. Defendants owed various duties to Plaintiff and the Class as a result of their insurer/insured relationship and/or duty of good faith and fair dealing.

232. By engaging in the elder deferred annuity scheme, Defendants extracted payments from Plaintiff and Class Members, including, but not limited to, annuity premiums, commissions, service charges, surrender charges and other fees, expenses and charges based upon misleading and fraudulent uniform sales presentations, marketing materials and annuity illustrations.

233. As a result of the relationships between and among the parties and the facts stated above, Defendants will be unjustly enriched if they are permitted to retain such funds; therefore, a constructive trust should be established over the monies that Plaintiff and the Class Members paid to Defendants. These monies are traceable to Defendants.

234. The victims of the unsuitable deferred annuity sales scheme described above have no adequate remedy at law and have been damaged in an amount to be determined at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of themselves and the Class, prays for judgment against Defendants as follows:

A. For a temporary, preliminary and permanent order for injunctive relief enjoining Defendants from pursuing the practices complained of above;

B. For a temporary, preliminary and permanent order for injunctive relief requiring Defendants to undertake an immediate public information campaign to inform members of the general public as to its prior practices and notifying the members of the putative Class of the potential for restitutionary relief;

C. For an order requiring disgorgement and restitution of Defendants' ill-gotten gains and payment of restitution to Plaintiff and the Class all funds acquired by means of any practice declared by this Court to be unlawful, fraudulent or unfair;



- 1 D. An order certifying the Class as defined herein;
- 2 E. Distribution of any monies recovered on behalf of Plaintiff or the Class, via fluid
- 3 recovery or *cy pres* recovery where necessary to prevent Defendants from retaining any of the profits
- 4 or benefits of their wrongful conduct;
- 5 F. Imposition of a constructive trust;
- 6 G. For reasonable attorneys' fees and costs of investigation and litigation under 18
- 7 U.S.C. §1964(c); and the common fund doctrine;
- 8 H. For compensatory, special and general damages according to proof;
- 9 I. For punitive and exemplary damages under Cal. Welf. & Inst. Code §15657(a) and
- 10 Cal. Civ. Code §3294;
- 11 J. For treble damages and penalties pursuant to 18 U.S.C. §1964(c); Cal. Civ. Code
- 12 §3345; Cal. Bus. & Prof. Code §§6153, 6175.4, 6175.5 and 17206.1; and Cal. Ins. Code §789;
- 13 K. For double damages under Cal. Prob. Code §859;
- 14 L. For transfer of the wrongfully obtained monies and/or property under Cal. Prob. Code
- 15 §§850-859 *et seq.*;
- 16 M. For costs of suit, pre-judgment and post-judgment interest; and
- 17 N. Such other and further relief as the interests of law or equity may require.

18 **JURY DEMAND**

19 Plaintiff demands a trial by jury.

20 DATED: April 27, 2007

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CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

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